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SUPREME COURT OF THE UNITED STATES.

No. 170.

JOHN A. HORBACH AND RICHARD WIGGINS, APPELLANTS,

vs.

JAMES BROWN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES

No. 19[illegible].

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vs.

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1 UNITED STATES OF AMERICA,
Territory of Nebraska, ss:

Proceedings had in the supreme court of the Territory of Nebraska, at the June term thereof, begun and held at the capital of said Territory, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and adjourned by order of said court until the eighteenth day of July, in the year aforesaid and at which were present the following named officers of said court:

Honorable William P. Kellogg, chief justice; Honorable Elmer S. Dundy, associate justice; Honorable William F. Lockwood, associate justice; Daniel Gantt, esq., attorney for United States; Phineas W. Hitchcock, esq., United States marshal; John H. Kellom, clerk of said court.

JAMES BROWN, appellee,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, appellants.

Be it remembered, that on the eleventh day of July, one thousand eight hundred ahd sixty-four, came into the said supreme court the said John A. Horbach and Richard Wiggin, appellants, by Messrs. Redick & Briggs, their solicitors, and filed in the office of the said clerk of said court a transcript of the record of certain proceedings duly had and taken in the district
2 court of said Territory for the first judicial district and county of Douglas, a true copy of which transcript is hereto annexed and marked "Exhibit A."

And afterwards, at the aforesaid June term of said supreme court, and on the twenty-fifth day of July, one thousand eight hundred and sixty-four, Honorable William P. Kellogg, chief justice, and Honorable Elmer S. Dundy, associate justice, presiding, this cause came on duly to be heard and determined upon said transcript so as aforesaid filed in said court, and thereupon the following proceedings were duly had:

In the supreme court of the Territory of Nebraska, in chancery.

RICHARD WIGGIN AND JOHN A. HORBACH, appellants,
vs.
JAMES BROWN.

This cause having come on to be heard upon the appeal from the district court of Douglas County, and the court having heard the arguments of the respective counsel of the parties complainant and defendants, and being fully satisfied in the premises, do affirm the decree of the court below made in this cause, Judge Dundy dissenting; and thereupon it is now here ordered, adjudged, and decreed by this court that the decree of the district
3 court be, and the same is hereby, affirmed, and that the appellee recover against the appellants the costs of this suit to be taxed.

And thereupon then and there the said defendants prayed an appeal to the Supreme Court of the United States, which appeal is hereby allowed, the said defendants having first made due proof by competent witnesses that the value of the property in controversy exceeded one thousand dollars. And the court do further order that bond for costs be required in the sum of three hundred dollars.

By the court.

W. P. KELLOGG, *Chief Justice.*
E. S. DUNDY, *Associate Justice.*

And thereupon, afterwards, to wit, on the 28th day of July, 1864, there was filed in the clerk's office of the supreme court, by Messrs. Redick & Briggs, solicitors for appellants, their bond, which is in the words and figures following, to wit:

Know all men by these presents that we, John A. Horbach, Richard Wiggins, and George R. Smith, are held and firmly bound unto James W. Brown in the full and just sum of three hundred dollars, to be paid to the said James Brown, his certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 25th day of July, A. D. 1864.

4 Whereas, lately, at a term of the supreme court of the Territory of Nebraska in a suit pending in said court between the said James Brown and the said John A. Horbach, a decree was rendered against the said John A. Horbach and Richard Wiggins, who, having thereupon, at the same term of the said court, in open court, claimed an appeal from the said decree to the Supreme Court of the United States to be holden at Washington on the first Monday of December next, and the same having been allowed: Now the condition of the above obligation is such that if the said John A. Horbach and Richard Wiggins shall prosecute their said appeal to effect and answer all costs if they fail to make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

JNO. A. HORBACH. [L. S.]
RICHARD WIGGIN,
By REDICK & BRIGGS,
Att'ys in fact.
GEO. R. SMITH.

Sealed and delivered in presence of and approved by me this 25th day of July, 1864, at Omaha, Nebraska Territory.

WM. P. KELLOGG,
Judge 1st Judicial District.

5 THE TERRITORY OF NEBRASKA,
County of Douglas, ss:

I, J. H. Kellom, clerk of the supreme court of the Territory of Nebraska, do hereby certify that the foregoing copy is a true and faithful transcript of all the records and proceedings had in the above-entitled cause, so full and entire as the same remain on file and entered of record in this office.

Witness my hand and the seal of said supreme court, at Omaha, N. T., this 2d day of November, A. D. 1864.

J. H. KELLOM, *Clerk Sup. Court.*

6 *Exhibit A, being a true copy of a transcript of the record of the district court filed in the supreme court of said Territory as is above stated.*

UNITED STATES OF AMERICA,
The Territory of Nebraska, County of Douglas, ss:

Pleas before the district court, in chancery, of the first judicial district, Territory and county aforesaid.

Be it remembered, that at a regular term of the district court of the first judicial district of the Territory of Nebraska, appointed to be held at the court-house, in the city of Omaha, in the county of Douglas, on Tuesday, the twenty-first day of April, in the year of our Lord one thousand eight hundred and sixty-three, and adjourned by order of court until the fourth Tuesday of May following, and again adjourned by order of court until the second day of June following.

Present: Honorable William P. Kellogg, judge; Charles H. Brown, esquire, district attorney; Thomas L. Sutton, sheriff of Douglas County, and John H. Kellom, clerk of said court.

The following proceedings were had:

Heretofore, to wit, on the 23d day of April, A. D. 1863, James Brown
7 filed in the office of the clerk and register of said court this bill of complaint in chancery, which said bill of complaint was in the words and figures following, to wit:

In chancery.

To the Honorable William P. Kellogg, judge of the district court of the Territory of Nebraska for the first judicial district and county of Douglas:

Humbly complaining, showeth unto your honor, your orator, James Brown, of the city of Omaha, in the said county of Douglas, that John A. Horbach, of the said city and county, claiming to have settled upon, inhabited, and improved certain lands and premises situate in the said county and Territory, known and described as follows, that is to say, the south half of the northeast quarter and the south half of the northwest quarter of section number fifteen, (15,) in township number fifteen (5) north, of range number thirteen (13) east of the sixth (6th) principal meridian, on or about the twenty-first day of November, one thousand eight hundred and fifty-seven; proved to the satisfaction of the register and receiver of the Omaha land district, (that being the district in which the said lands were situate,) that he had settled upon and improved the said lands, as is required by the act of the Congress of the United States entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4th, 1841, and pretending to have complied with the several provisions of the said act, and with the regulations of the government made in pursuance thereof, the said Horbach did then and there, under and in virtue of the said act, enter the said lands with the said register; and thereupon that officer did make, execute, and deliver to him, the said Horbach,
8 the usual patent certificate for said lands.

And your orator further shows unto your honor that on the day aforesaid the said Horbach was, and from thence to the day hereinafter in that behalf mentioned continued to be, in the occupancy and possession of the said premises, cultivating, improving, and inhabiting the same.

And your orator further shows unto your honor that the aforesaid proceedings, had by and before the said register and receiver, having been by them in the due course of their official duties reported to the honorable Commissioner of the General Land Office, such other and further proceedings were had in the matter of the rights claimed by the said Horbach to pre-empt the said premises, that it was by the proper officer of the land department of the government, decided and ordered that the entry of the said premises so as aforesaid by the said Horbach made was illegal and void, for the reason, among others, that the said premises were included within the limits of the incorporate city of Omaha long prior to the time when the said Horbach had set up, or alleged, or claimed to have settled upon the said premises. That on or about the first day of November, one thousand eight hundred and sixty, the aforesaid Commissioner, by his official letter of that date, ordered the aforesaid register and receiver to cancel upon the books of their office the said entry of the said lands by the said Horbach made, and restore the said lands to the body of the public lands; that accordingly, and in obedience to the said direction of the said Commissioner, the said register and receiver did cancel the said entry upon their books, and that thereby
9 the said lands were restored to the body of the public lands.

And your orator further shows unto your honor that the said lands being an isolated or disconnected tract, and never having been offered to be sold at public auction, the said Commissioner directed the said register and receiver that they should sell the same at public auction as such tract; that the said register and receiver having, pursuant to the directions of the said Commissioner, given thirty days' notice in that behalf, on the fifteenth day of December, in the year last aforesaid, in pursuance of such notice, exposed the said lands for sale at public auction.

And your orator further shows unto your honor that the said Horbach employed one Josiah S. McCormick to attend at the said sale as a bidder, ostensibly in his own name, but in fact on behalf of said Horbach, and advanced and furnished to the said McCormick a large sum of money, to wit, the sum of about eight hundred dollars, with which to make payment for the said lands; that accordingly the said McCormick did attend the said sale and then and there became and was declared to be the best bidder and purchaser of the said premises at and for the price or sum aforesaid; that thereupon the said McCormick, in his own name, but in fact on behalf of the said Horbach, paid to the said receiver the sum so by him bidden, the same having been advanced to him by said Horbach, as above stated; and thereupon the said officers made, issued, and delivered to the said McCormick, for said Horbach, their usual patent certificate for the said lands.

10 And your orator further shows unto your honor that on the day last aforesaid the said Horbach was indebted unto one Jonas Seeley, esquire, formerly of the city aforesaid, in a large sum of money, the exact amount of which is to your orator unknown, for work and labor, care, diligence, and attendance of the said Seeley, by him done, performed, and bestowed as the attorney, solicitor, and counsel of and for the said Horbach in and about defending and prosecuting divers suits and causes and matters, and transacting divers business of the said Horbach, and at his special instance and request.

And your orator further shows unto your honor that on the day last aforesaid the said McCormick, in pursuance of the direction and appointment of the said Horbach, made, executed, and acknowledged his certain deed of conveyance, bearing date on the said day, whereby, for the consideration, as therein expressed, of one dollar to him by said Seeley paid, but in fact for the consideration hereinafter stated, he conveyed to said Seely in fee a certain part and parcel of the said lands, known and described as follows, that is to say, commencing at the northwest corner of the southwest quarter of the northwest quarter of section number fifteen, in township number fifteen north, of range number thirteen east of the sixth principal meridian, in the Territory of Nebraska; running thence east forty rods; thence south forty rods; thence west forty rods; thence north forty rods, to the place of beginning. And the said deed did contain the covenant and agreement of the said McCormick, to and with the said Seely, by the said McCormick at and upon the direction of the said Horbach, in that behalf made and given; that he, the said McCormick, would forever warrant and defend the said

11 premises and the title thereto unto the said Seely, his heirs and assigns, against the lawful claims of all persons whomsoever, lawfully claiming the same by, through, from, or under him, the said McCormick, and which said deed the said Horbach, for the purpose of satisfying and discharging his aforesaid indebtedness to the said Seely, on the day last aforesaid, offered to deliver to the said Seely.

And your orator further shows unto your honor that in order to induce the said Seely to accept the said deed, and the premises therein described, in full satisfaction and discharge of his aforesaid indebtedness to the said Seely, the said Horbach then and there did promise, covenant and agree,

to and with the said Seely that he, the said Horbach, and all and every other person or persons having or lawfully claiming, or who should or might at any time therafter have or lawfully claim, any estate, right, title, trust, interest at law or in equity of, into, or out of the premises by the said deed granted, or any part thereof, should and would at all times thereafter make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful act and acts, conveyances and assurances in law whatsoever, for the better, further, more perfect, and absolute granting, conveying, and assuring the premises, by the said deed granted, to be thereby granted, released and confirmed unto and to the use of the said Seely, his heirs or assigns, forever, as by the said Seely, his heirs or assigns, should be reasonably required.

And your orator further shows unto your honor that the said Seely, reposing full faith and confidence in the said Horbach, and in such his
12 promise, covenant and agreement, and in consideration thereof, then and there accepted and received of and from the said Horbach the aforesaid deed conveying the said premises to him, in full satisfaction and discharge of the indebtedness of the said Horbach to him as aforesaid, by virtue of which said grant and conveyance the said Seely afterwards, and on the day last aforesaid, entered into the said premises, and became and was seized thereof, in his demesne as of fee; which deed was on said day duly recorded in the office of the register of said county, as by the said record will on reference appear.

And your orator further shows unto your honor that the said Seely, being desirous of removing from this Territory and selling the said premises, on or about the first day of February, one thousand eight hundred and sixty-one, offered the said premises to your orator for sale; that the said Horbach was, pending the negotiation between the said Seely and your orator, for the purchase and sale of the north half of the said premises, well advised that your orator and the said Seely were treating in that behalf, and that your orator had agreed with the said Seely to pay to him, the said Seely, the sum of two hundred dollars for the same, and was about to consumate such his agreement by paying to said Seely the said sum, and receiving from him a conveyance of said premises, yet the said Horbach concealed from your orator the fact he had, or claimed to have, any right, title, interest, claim, or demand of, in, to, or upon the said premises or any part thereof, although your orator was totally ignorant thereof.

13 And your orator further shows unto your honor that your orator, being so as aforesaid ignorant of the fact that the said Horbach had or claimed to have any right, title, interest, claim, or demand of, in, to, or upon the said premises, with the knowledge of the said Horbach, on the third day of May, in the year aforesaid, purchased the last above-mentioned premises from the said Seely for the agreed price of three hundred dollars, by your orator paid to said Seely therefor, whereupon the said Seely made, executed and acknowledged, and delivered to your orator his certain deed of conveyance, bearing date on said day, whereby, for the consideration aforesaid, he, together with Cornelia, his wife, conveyed to your orator the said premises in fee; that said deed was on the day of its date recorded in the office of the register of deeds of the said county, in Book of Deeds "N," at page 337, as by the same, and the certificate of acknowledgment thereto annexed, and of the recording thereof, thereon endorsed, ready to be produced as your honor shall direct, will more fully appear.

And your orator further shows unto your honor that by virtue of the said grant and conveyance, your orator, afterwards, to wit, on the day and year last aforesaid, entered into the said premises and became and was seized thereof, in his demesne as of fee, with the knowledge of the said Horbach,

and being so possessed thereof, as aforesaid, and with the knowledge of the said Horbach, at an expense and to the value of the sum of one hun-
14 dred and fifty dollars and over, improved, cultivated, and fenced the same, and from thence to the day of the filing of this bill your orator has, by virtue of and under the said deed, occupied and possessed said premises, nor for a long space of time, to wit, one year and over, had your orator any knowledge whatever that said Horbach had, or claimed to have, any interest in said premises.

And your orator further shows unto your honor that on or about the first day of April, one thousand eight hundred and sixty-two, upon some proceeding or proceedings by the said Horbach procured to be had, but by what means he so procured the same to be had and what the nature thereof was, your orator is not informed. The honorable Secretary of the Interior reversed the decision made in and by the land department of the government as hereinbefore stated, and decided that the lands first above described were subject to the operations of the act first above entitled, notwithstanding the same were included within the limits of the incorporated city of Omaha, and ordered that the entry so as aforesaid made by the said Horbach, under and by virtue of said act, should be restored to the same condition and plight in which the same was on the day of the making thereof, and that the purchase so as aforesaid made at public auction by the aforesaid McCormick, on behalf of said Horbach, be cancelled and vacated, and that the usual note thereof be by the aforesaid register and receiver made in the books of their office, and that the sum of eight hundred dollars so as aforesaid bidden by the said McCormick for the said lands, and by him out of funds in the
15 behalf furnished to him by the said Horbach paid therefor, be refunded to the person entitled thereto, upon the return to the said land department of the patent certificate so as aforesaid at the said public sale made, issued, and delivered to the said McCormick.

And your orator further shows unto your honor that on or about the day aforesaid, the said Horbach surrendered the patent certificate last above mentioned, and thereupon the aforesaid sum of eight hundred dollars by him paid, or by said McCormick for him paid, for the said premises, was by the proper officer of the government repaid to the said Horbach; that your orator was totally ignorant of all and every the aforesaid proceedings, and the same were by all the persons, parties, and officers engaged therein concealed from your orator; and so the said purchase made by the said McCormick was vacated, canceled, and altogether held for and made nought by the aforesaid land officers and the said Horbach, and thereupon the usual letters patent of the United States were made, issued, and delivered by the proper officer or officers of the government to the said Horbach, whereby the said premises first herein described were, in virtue of the act aforesaid and his entry aforesaid by the United States, granted unto the said Horbach, to have and to hold unto him and his heirs in fee simple forever.

And your orator further shows unto your honor that on the twenty-third day of April, in the year last aforesaid, the said Horbach, together
16 with Sallie, his wife, by their deed of conveyance, bearing date on said day, conveyed to Richard Wiggin, of Alleghany City, in the State of Pennsylvania, the premises hereinbefore stated to have been by said McCormick conveyed to said Seely, and that in and by the said deed the said Horbach did covenant and agree to and with the said Wiggin that he was lawfully seized of a good and indefeasible estate in fee simple of and in the said premises, and that he had good right and lawful authority to sell and convey the same, that the same were free and clear of all incumbrance, and that he, the said Horbach, would warrant and defend the said premises against the lawful claims of all persons whomsoever; that the said deed was

afterwards recorded in the office of the register of deeds of the said county of Douglas, as by the record thereof, reference being had thereunto, will more fully appear, and your orator charges that at the making of said deed the said Wiggin had due notice of the rights of your orator in the said premises.

And your orator further shows unto your honor that the said Richard Wiggin threatens and intends to bring an action of ejectment against your orator in order to turn your orator out of the possession of the said premises, unless he be restrained therefrom by the order and injunction of this honorable court.

And your orator well hoped that the said Horbach and the said Wiggin would have released to your orator all right, title, and interest by
17 them or either of them, had or claimed of, in, or to the aforesaid premises conveyed to your orator, and would have altogether desisted from alleging or setting up any claims to the said premises as in equity and good conscience they ought to have done.

But now so it is, may it please your honor, the said John A. Horbach and Richard Wiggin, combining and confederating together, and with divers other persons to your orator unknown, whose names when discovered your orator prays may be inserted herein with proper and apt words to charge them as parties defendant hereto, and contriving how to wrong, injure, and oppress your orator in the premises, absolutely refuse so to do; all of which actings, doings and refusals, tend to the manifest wrong, injury, and oppression of your orator in the premises.

In tender consideration thereof, and forasmuch as your orator is without adequate remedy at and by the strict rules of the common law, and can only have relief in a court of equity where matters of this and like nature are properly cognizable and relievable:

To the end, therefore, that the said John A. Horbach and Richard Wiggin, and their confederates when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the matters and things hereinafter stated and charged, and that as fully and particularly as if the same were here repeated and they
18 thereto severally and specially interrogated, and that they shall so answer, not only to the best of their several knowledge and remembrance, but also to the best and utmost of the several and respective hearsay information and belief, and that the said John A. Horbach and Richard Wiggin may be decreed to release to your orator all right, title, interest, claim, or demand by them, or either of them, had held, acquired, or claimed, of, in, to, or upon, the premises so as aforesaid by the said Seely conveyed to your orator, and that it may be referred to a master to settle such conveyance if the parties should differ about the same, and that the said defendants may in the mean time be by the order and injunction of this honorable court restrained from bringing any action of ejectment against your orator to turn him out of the possession of the said premises, and that your orator may have such other or further relief as the nature of this case shall require, and shall be agreeable to equity.

May it please your honor to grant unto your orator not only the most gracious writ of injunction of the Territory, issuing out of and under the seal of this honorable court, to be directed to the said John A. Horbach and Richard Wiggin, and to the attorneys, agents, solicitors, trustees, and counsellors of each of them, to restrain them and each of them from proceeding at law touching any of the matters in question as aforesaid, but also the most gracious writ of subpœna of the Territory, to be issued and directed in like manner, commanding the said Horbach and Wiggin, at a cer-
19 tain day therein to be inserted, personally to be and appear before

your honor in this honorable court, and then and there to answer the premises and further to stand to, perform, and abide such order and decree therein as to your honor shall seem to be agreeable to equity and good conscience.

And your orator will ever pray, &c.

JAMES BROWN.

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

James Brown, being duly sworn, says he is the complainant in the foregoing bill of complaint by him subscribed; that he has read the same and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that Richard Wiggin is one of the defendants in said bill, and that service of subpœna cannot be made upon him in this Territory; that he does not reside within the same, and that the subject of said bill is certain real estate in the said Territory, and that the said Wiggin claims an actual interest therein.

JAMES BROWN.

Subscribed in my presence, and sworn to before me, this 21st day of April, A. D. 1863.

JOHN McCARTHY, *Justice of the Peace.*

20 District court in chancery; Douglas county; Omaha, April 23d, 1863. Before Daniel Gantt, esq., master.

JAMES BROWN
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants.

It appearing that Richard Wiggin is a non-resident of this Territory and cannot be served with subpœna therein, and claims an interest in certain real estate which is the subject of the above-entitled suit, and is situated in said Territory, on motion of J. M. Woolworth, solicitor for the complainant, it is hereby ordered that due notice to him of the pendency of this suit be published in the Daily Omaha Nebraskian newspaper.

DAN. GANTT,
Master in Chancery, Douglas County, N. T.

And thereupon afterwards, to wit, on the 23d day of April, A. D. 1863, there issued out of and under the seal of said court a subpœna in chancery in said cause, which said subpœna was in the words and figures following, to wit:

"The Territory of Nebraska to John A. Horbach, greeting:

We hereby command you that you appear in our district court of the first judicial district, within and for the county of Douglas, in chancery, on the
21 25th day of May, 1863, to answer a bill of complaint exhibited against you and Richard Wiggin in our said court by James Brown, and to do further and receive what our said court shall have considered in that behalf.

The sheriff of Douglas County will return this writ on the 4th day of May, A. D. 1863.

Witness Hon. William P. Kellogg, judge of our said court, the 23d day of April, 1863.

[SEAL.] J. H. KELLOM, *Register.*
" , *Solicitor.*"

On which said subpœna were endorsed the following words and figures, to wit:

"No. 262. District court, Douglas County. In chancery. James Brown *vs.* John A. Horbach *et al.* Subpœna in chancery

April 24th, A. D. 1863, at 3 o'clock, p. m. received this writ; served April 25th, A. D. 1863 by delivering a copy of this writ to John D. Horbach, personally. Fees, 75.

"THOMAS L. SUTTON,
"*Sheriff of Douglas County, N. T.*
"J. H. KELLOM, *Register.*"

Filed April 27, 1863.

And thereupon afterwards, to wit, on the 19th day of May, A. D. 1863 there was filed in the office of the clerk of said court a demurrer of the defendant, John A. Horbach, to said bill of complaint, which said demurrer was in the words and figures following, to wit:

In the district court, Douglas County, Neb. Territory.

JAMES BROWN
vs.
JOHN A. HORBACH. } In chancery.

22 This defendant, John A. Horbach, by protestation, not confessing all or any of the matters or things in said bill of complaint to be true in the manner and form as therein charged and set forth, doth demur thereto, and for cause of demurrer showeth that the said complainant does not state or make in and by his said bill such a case as to entitle him to the discovery and relief therein prayed.

Second. For special cause of this demurrer this defendant says it does not appear that this defendant bound himself in legal way to make or cause to be made a perfect title to the land in controversy in case the McCormick title failed; but it appears from the bill that the said Seely took said deed from said McCormick in full satisfaction of said indebtedness, and upon that he must rely.

Wherefore this defendant demands the judgment of this court whether he shall be compelled to make any other or further answer to said bill, and prays to be hence dismissed with costs in his behalf sustained.

REDICK & BRIGGS, *Sol. for Horbach.*

And thereupon, to wit, on said 19th day of May, A. D. 1863, the said defendant, Richard Wiggin, filed a motion in the office of the clerk of said court, which said motion was in the words and figures following, to wit:

In the district court, Douglas Co., Neb.

JAMES BROWN, compl't,
vs.
JOHN A. HORBACH *et al.* } In chancery.

23 And now comes the defendant, Richard Wiggin, by his sol., Redick & Briggs, for the special purpose of making this motion and for no other, and moves the court to dismiss this suit as far as this defendant is concerned for the following reasons, to wit:

1st. The subpœna is not directed to the defendants as required by the rules of this court.

2nd. There was no affidavit filed that the defendant could not be served with process as required by law to authorize publication.

REDICK & BRIGGS,
Sol. for Wiggin in this motion.

And thereupon afterwards, to wit, on the 13th day of June, A. D. 1863, there were filed in the office of the clerk of said court the notice to the defendant, Richard Wiggin, and an affidavit of the publication of said notice which said notice and affidavit were in the words and figures following, to wit:

"*Legal notice.*—To Richard Wiggin: Take notice of a bill of complaint exhibited in the district court, in chancery, of the Territory of Nebraska for the first judicial district and county of Douglas, by James Brown against you and John A Horbach, the object and prayer of which said bill is that you and said Horbach be decreed by said court to release to said Brown all right, title, interest, claim, or demand by you or either of you had,
24 held, acquired, or claimed of, in, to, or upon that certain piece or parcel of land, being the north half of that certain piece of land described as follows: Commencing at the northwest corner of the southwest quarter of northwest quarter of section 15, township 15, range 13 east of the 6th principal meridian, running thence east forty rods; thence south 40 rods; thence west 40 rods; thence north 40 rods, and that you be enjoined from bringing any action of ejectment to turn said Brown out of possession thereof, and for general relief. You are required to appear and plead answer or demur to said bill on the first day of June, 1863.

JAS. M. WOOLWORTH, *Sol'r for Compl't.*

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, M. H. Clark, being duly sworn, on my oath do say that the notice hereunto attached was published for five consecutive weeks next after the 23d day of April, A. D. 1863, in the Daily Omaha Nebraskian, a newspaper published by M. H. Clark, and printed in said county of Douglas, and which was during that time in general circulation in the county of Douglas and Territory of Nebraska.

M. H. CLARK.

Sworn to and subscribed before me this 2nd day of June, A. D. 1863.
[SEAL.] BYRON REED,
Notary Public for Douglas County, Nebraska.

Fees: Publication, $7 50; affidavit, 30.

25 And thereupon afterwards, to wit, on the 22nd day of June, A. D. 1863, there was filed in the office of the clerk of said court and entered on the journal an order made by said court, William P. Kellogg, judge, overruling the said motion of defendant Wiggin, and the said demurrer of defendant Horbach, which said order was in the words and figures following, to wit:

At a district court, in chancery, held at the city of Omaha for the county of Douglas, on the day of June, 1863.

Present: Honorable William P. Kellogg, judge.

JAMES BROWN
vs.
JOHN A. HORBACH *et al.*

The motion filed in this cause on behalf of defendant Wiggin having

come on to be heard was argued by counsel, and thereupon it is ordered the same be overruled; and the demurrer of defendant Horbach having come on to be heard, was argued by counsel, and thereupon it is ordered that the said demurrer be overruled and he, Horbach, answer the bill of complaint filed in this cause within sixty days from the date hereof. And the defendants thereupon prayed an appeal; and the defendant have to the last day of the term to plead.

WM. P. KELLOGG, *Judge.*

And thereupon afterwards, to wit, on the 11th day of July, A. D.
26 1863, the defendant Richard Wiggin filed in the office of the clerk of said court his demurrer to said bill of complaint, which said demurrer was in the words and figures following, to wit:

In district court, Douglas County, Neb.

JAMES BROWN, complainant, *vs.* JOHN A. HORBACH *et al.* } In chancery.

The defendant Richard Wiggin, by protestation, not confessing all or any of the matters and things in said bill of complaint contained to be true, doth demur thereto, on the following grounds, to wit:

That the said complainant does not state such a case or facts sufficient to constitute a good cause of action or to entitle the complainant to the discovery and relief prayed, and therefore submits to the court whether he shall make any other or further answer, and asks to be dismissed, with costs.

R. WIGGIN,
R. & B., *Sol.*

And thereupon afterwards, to wit, on the said 11th day of July, A. D. 1863, there was filed in the office of the clerk of said court and entered on the journal an order made by said court, William P. Kellogg, judge, overruling the said demurrer of defendant Wiggin, which said order was in the words and figures following, to wit:

At a district court, in chancery, held at the city of Omaha, for Douglas County, on the 11 day of July, 1863.

Present: Honorable W. P. Kellogg, judge.

27 JAMES BROWN *vs.* RICHARD WIGGIN, impleaded with John A. Horbach. }

The demurrer of said Wiggin having been argued by counsel, it is ordered the same be overruled and that said defendant answer to merits of said bill within sixty days from date hereof.

WM. P. KELLOGG, *Judge.*

And thereupon afterwards, to wit, on the 22nd day of July, A. D. 1863, interrogatories in said cause were filed in the office of the clerk of said court, which said interrogatories were in the words and figures following, to wit:

Interrogatories to be administered to Jonas Seeley, a witness to be produced, sworn, and examined under and by virtue of the commission hereto annexed, issued out of the district court, in chancery, of the Territory of Nebraska, for the first judicial district and county of Douglas, in a certain cause depending therein, between James Brown, complainant, and John A. Horbach and Richard Wiggin, defendants.

First interrogatory. What is your name, age, occupation, and place of residence?

2nd. There was no affidavit filed that the defendant could not be served with process as required by law to authorize publication.

REDICK & BRIGGS,
Sol. for Wiggin in this motion.

And thereupon afterwards, to wit, on the 13th day of June, A. D. 1863, there were filed in the office of the clerk of said court the notice to the defendant, Richard Wiggin, and an affidavit of the publication of said notice which said notice and affidavit were in the words and figures following, to wit:

"*Legal notice.*—To Richard Wiggin: Take notice of a bill of complaint exhibited in the district court, in chancery, of the Territory of Nebraska for the first judicial district and county of Douglas, by James Brown against you and John A Horbach, the object and prayer of which said bill is that you and said Horbach be decreed by said court to release to said Brown all right, title, interest, claim, or demand by you or either of you had,
24 held, acquired, or claimed of, in, to, or upon that certain piece or parcel of land, being the north half of that certain piece of land described as follows: Commencing at the northwest corner of the southwest quarter of northwest quarter of section 15, township 15, range 13 east of the 6th principal meridian, running thence east forty rods; thence south 40 rods; thence west 40 rods; thence north 40 rods, and that you be enjoined from bringing any action of ejectment to turn said Brown out of possession thereof, and for general relief. You are required to appear and plead answer or demur to said bill on the first day of June, 1863.

JAS. M. WOOLWORTH, *Sol'r for Compl't.*

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, M. H. Clark, being duly sworn, on my oath do say that the notice hereunto attached was published for five consecutive weeks next after the 23d day of April, A. D. 1863, in the Daily Omaha Nebraskian, a newspaper published by M. H. Clark, and printed in said county of Douglas, and which was during that time in general circulation in the county of Douglas and Territory of Nebraska.

M. H. CLARK.

Sworn to and subscribed before me this 2nd day of June, A. D. 1863.
[SEAL.] BYRON REED,
Notary Public for Douglas County, Nebraska.

Fees: Publication, $7 50; affidavit, 30.

25 And thereupon afterwards, to wit, on the 22nd day of June, A. D. 1863, there was filed in the office of the clerk of said court and entered on the journal an order made by said court, William P. Kellogg, judge, overruling the said motion of defendant Wiggin, and the said demurrer of defendant Horbach, which said order was in the words and figures following, to wit:

At a district court, in chancery, held at the city of Omaha for the county of Douglas, on the day of June, 1863.

Present: Honorable William P. Kellogg, judge.

JAMES BROWN
vs.
JOHN A. HORBACH *et al.*

The motion filed in this cause on behalf of defendant Wiggin having

come on to be heard was argued by counsel, and thereupon it is ordered the same be overruled; and the demurrer of defendant Horbach having come on to be heard, was argued by counsel, and thereupon it is ordered that the said demurrer be overruled and he, Horbach, answer the bill of complaint filed in this cause within sixty days from the date hereof. And the defendants thereupon prayed an appeal; and the defendant have to the last day of the term to plead.

WM. P. KELLOGG, *Judge.*

And thereupon afterwards, to wit, on the 11th day of July, A. D.
26 1863, the defendant Richard Wiggin filed in the office of the clerk of said court his demurrer to said bill of complaint, which said demurrer was in the words and figures following, to wit:

In district court, Douglas County, Neb.

JAMES BROWN, complainant, *vs.* JOHN A. HORBACH *et al.* } In chancery.

The defendant Richard Wiggin, by protestation, not confessing all or any of the matters and things in said bill of complaint contained to be true, doth demur thereto, on the following grounds, to wit:

That the said complainant does not state such a case or facts sufficient to constitute a good cause of action or to entitle the complainant to the discovery and relief prayed, and therefore submits to the court whether he shall make any other or further answer, and asks to be dismissed, with costs.

R. WIGGIN,
R. & B., *Sol.*

And thereupon afterwards, to wit, on the said 11th day of July, A. D. 1863, there was filed in the office of the clerk of said court and entered on the journal an order made by said court, William P. Kellogg, judge, overruling the said demurrer of defendant Wiggin, which said order was in the words and figures following, to wit:

At a district court, in chancery, held at the city of Omaha, for Douglas County, on the 11 day of July, 1863.

Present: Honorable W. P. Kellogg, judge.

27 JAMES BROWN *vs.* RICHARD WIGGIN, impleaded with John A. Horbach. }

The demurrer of said Wiggin having been argued by counsel, it is ordered the same be overruled and that said defendant answer to merits of said bill within sixty days from date hereof.

WM. P. KELLOGG, *Judge.*

And thereupon afterwards, to wit, on the 22nd day of July, A. D. 1863, interrogatories in said cause were filed in the office of the clerk of said court, which said interrogatories were in the words and figures following, to wit:

Interrogatories to be administered to Jonas Seeley, a witness to be produced, sworn, and examined under and by virtue of the commission hereto annexed, issued out of the district court, in chancery, of the Territory of Nebraska, for the first judicial district and county of Douglas, in a certain cause depending therein, between James Brown, complainant, and John A. Horbach and Richard Wiggin, defendants.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, any or either of them, in the title to these interrogatories named? If so, how long have you known them, respectively, or such of them as you do know?

28 Third interrogatory. Where did you reside and in the practice of what, if any, profession were you engaged from July 10th, 1856, to July 1st, 186 ?

Fourth interrogatory. State whether or not you were ever employed by the said defendant John A. Horbach to do any service or services for him. If so, when, where, what was the nature of such service or services, each and every thereof, and what, if any, services you rendered to the said Horbach under or by virtue of such employment?

Fifth interrogatory. State whether or not you were ever by the said Horbach paid for services so by you rendered to him at his said request, if any you did render. If you answer that you were paid, declare fully how and when, and where, and by whom, and in whose presence you were so paid.

Sixth interrogatory. State whether or not you do know who made the bid at the public sale made by the register and receiver of the United States land office, at Omaha, Nebraska, for the south half of the northeast quarter and the south half of the northwest quarter of section fifteen, in township fifteen north, of range thirteen east of the sixth principal meridian in said Territory, on the 15th day of December, 1860; if you do, state.

Seventh interrogatory. State, if you know, whether the person making such bid did so in trust for any other person or party; if so, who was the party or person for whom such bid was made? Declare fully your means of knowledge of the matter here inquired after.

29 Eighth interrogatory. State, if you know, whose money was paid for said lands at the aforesaid sale thereof. Declare fully your means of knowledge of the matter here inquired after.

Ninth interrogatory. Do you know at whose, if any person's, instance, the sale of said lands made by the aforesaid land officers was vacated and set aside by the Commissioner of the General Land Office? If you do know, state and declare fully your means of information on that point.

Tenth interrogatory. If, in answer to the fifth above interrogatory, you state that you were paid for services rendered by you to said Horbach, by the conveyance of lands to you, state what lands were conveyed to you and by whom, and at whose, if any person's, direction, and whether or not the same were conveyed to you upon or in pursuance of any contract or agreement made by you with any, and if so, what, person or persons.

Eleventh interrogatory. If, in answer to the last above interrogatory, you say that lands were conveyed to you in pursuance of a contract or agreement made by you and in payment for services rendered by you to said Horbach, declare fully what that agreement was, and when, and where, and in whose presence the same was made.

Twelfth interrogatory. If you state that lands were conveyed to you in payment or satisfaction for services rendered by you to the said Horbach, state whether or not you did accept and receive the same as and for a satisfaction and discharge of your demand against him for such services.

30 Thirteenth interrogatory. State whether or not you did ever sell to the complainant, in the title to these interrogatories named, any portion of the lands, if any, so received by you for said services. If so, state whether or not at the time you were negotiating such sale or at the time you conveyed said lands to the said complainant the said Horbach knew that you were negotiating such sale or conveying said lands. If so, declare fully your means of knowledge of the fact.

Fourteenth interrogatory. Do you know, and if so, state, whether or not the aforesaid complainant was, before paying to you the consideration for

said premises, advised that the said Horbach claimed any interest in said premises? Declare fully your means of knowledge.

Last interrogatory. If you know any other matter or thing touching the matters in controversy in this cause set the same forth as fully as if the same were here repeated and you specially interrogated thereunto.

And thereupon afterwards, to wit, on the 15th day of September, A. D. 1863, there issued out of and under the seal of said court a commission to take depositions in said cause, which said commission was in the words and figures following, to wit:

The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery.

THE TERRITORY OF NEBRASKA, *County of Douglas:*

31 To Geo. Mederia, justice of the peace for Ormsby Co., N. T., greeting:

Know you that we, having full faith in you prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine upon interrogatories annexed to this commission Jonas Seely, esquire, of Carson City, in Nevada, in a certain cause pending in this court, wherein James Brown is complainant, and John A. Horbach and Richard Wiggin, defendants, on oath, to be by you administered, to take and certify the depositions of the said witnesses, and return the same in accordance with the statute in such case made and provided.

Witness the Hon. , judge of the district court of the first judicial district, at the city of Omaha, on the fifteenth day of September, A. D. 1863.

[SEAL.] JOHN H. KELLOM, *Clerk,*
By H. M. DICKINSON, *Dep't Clk.*

And thereupon afterwards, to wit, on the 20th day of November, A. D. 1863, the deposition of Jonas Seely, a witness on behalf of said complainant, was filed in the office of the clerk of said court, which said deposition was in the words and figures following, to wit:

The district court of the 1st judicial district, within and for the county
32 of Douglas, in chancery.

TERRITORY OF NEBRASKA:

JAMES BROWN, compl't,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, def'ts.

Deposition of Jonas Seely, a witness produced, sworn, and examined on behalf of the complainant named in the annexed commission and under and by virtue thereof.

Jonas Seeley, being duly sworn as hereinafter certified, answering to 1st interrogatory he saith: My name is Jonas Seely; I am thirty years old; am a lawyer by profession and occupation, and reside at Carson City, Nevada Territory.

To the 2nd interrogatory he saith: I know the complainant, James Brown, and defendant John A. Horbach, and have known them for about seven years. The defendant Wiggin I do not know.

To the third interrogatory he saith: I resided in Omaha, Nebraska, and was engaged in the practice of law from July 1st, 1856, to May 1st, 1861.

To the 4th interrogatory he saith: At Omaha, Nebraska, in 1857, I was employed by defendant Horbach as his attorney, in procuring and defending his title and claims to the tract of 160 acres of land mentioned hereafter in this deposition, and under such employment I acted as his attorney
33 before the land office, giving advice and supervising the preparation of papers, affidavits, &c., in relation to that land.

To the 5th interrogatory he saith: I was paid for my services by Mr. Horbach, by a conveyance of ten acres of land, a square piece taken from the northwest corner of the said tract made by Josiah S. McCormick, to me at Omaha, on or about the 15th day of December, 1860. The deed was filled out by me in presence of John A. Horbach and A. J. Hanscom, taken by Horbach to McCormick for execution, and when executed was delivered to me by Horbach in the presence of Mr. A. J. Hanscom.

To the 6th interrogatory he saith: I know from the statements of both McCormick and Horbach, as well as from the fact that I had advised that it be so done, that Josiah S. McCormick bid off that land.

To the 7th interrogatory he saith. I know from conversation had by me with Mr. McCormick, as well as with Mr. Horbach, that McCormick made the bid in trust, and as the agent of defendant Horbach; both of them told me so, and, besides, Mr. Horbach told me before the sale that he had agreed with Mr. McCormick that he should so make the bid.

To the 8th interrogatory he saith: John A. Horbach's money paid for that land; at least Horbach told me it was his money, and McCormick
34 told me he had no interest in the matter except as the friend of, and to oblige, said Horbach.

To the 9th interrogatory he saith: I have been told that the sale was vacated and supposed at the instance of John A. Horbach from the fact that I had advised Mr. Horbach that his title to that land, obtained under his preemption, was valid, and would be so adjudged if he continued to prosecute his claim under it, which he always said he intended to do.

To the 10th interrogatory he saith: As I have before stated I was paid for those services by a conveyance of ten acres of land from Josiah S. McCormick to me; that the same was made by the direction of John A. Horbach, and in pursuance of an agreement made by said Horbach and myself.

To the 11th interrogatory he saith: The agreement referred to was made at Omaha a few days before the 15th day of December, 1860, in the presence of Mr. A. J. Hanscom, and afterwards repeated to Mr. Jesse Lowe, and was that for the services already rendered by me to Horbach and to be rendered by myself and Mr. Hanscom. About the public sale of said land, said Horbach was to give and cause to be conveyed to me by perfect title said ten acres of ground, and if he finally was unable to make such conveyance and title good, he was to pay me $1,000 in money.

35 To the 12th interrogatory he saith: I did take such conveyance in full payment for said services, with the understanding that if the title failed, and it should be beyond his power to confirm and perfect it, then he was to pay me $1,000.

To the 13th interrogatory he saith: I did sell one half of said ten acres of land to said complainant, and it is my recollection that Horbach knew that I was selling him the ground, for the question of title was talked of freely, and the agreement that Horbach should make the title perfect fully understood.

To the 14th interrogatory he saith: The said complainant had no knowledge or intimation, so far as I know, that defendant claimed any interest in

that land at the time the complainant paid me for it; but, on the contrary, he had from my declarations and from other sources every reason to believe that Horbach claimed no interest in, except to make my title perfect as he had agreed to do.

To the last interrogatory he saith: I believe I have fully explained.

JONAS SEELY.

TERRITORY OF NEVADA, *County of Ormsby, ss:*

I, George Maderia, a justice of the peace in and for said county, residing at Carson City, do hereby certify that I did first duly swear the aforementioned Jonas Seely to testify the truth, the whole truth, and nothing
36 but the truth, in answer to the interrogatories hereto annexed, and that in answer to them, and each of them, he testified in the manner above written; that his said deposition was reduced to writing by him in my presence, and in my presence subscribed by him, and that said deposition was taken before me at Carson City, in said county, on the 26th day of October, A. D. 1863.

Witness my hand this 26th day of October, A. D. 1863.

GEO. MADERIA,
Justice of the Peace, Ormsby Co., N. T.

[U. S. R. S., 5 c'ts.]

TERRITORY OF NEVADA, *County of Ormsby:*

I, Alfred Helm, clerk of the district court of the second judicial district, in and for said Territory, do hereby certify that George Maderia, esq., whose name is attached to the foregoing certificate is, and was at the time of so doing, an acting justice of the peace in and for said county, duly commissioned and sworn, and that full faith and credit are due to this official acts, and that his signature to said certificate is genuine.

I further certify that the foregoing instrument is executed in accordance with the laws of said Territory of Nevada.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court this 26th day of October, A. D. 1863.

[SEAL.] ALFRED HELM, *Clerk.*

[U. S. R. S. 5 c'ts.]

37 And thereupon, to wit, on the 10th day of September, 1863, the answer of R. Wiggins was filed, in words and figures following, to wit:

In the district court, Douglas County, Nebraska Territory, in chancery.

The separate answer of Richard Wiggin, one of the respondents, to the bill of complaint exhibited in this court by James Brown against this respondent and John A. Horbach.

This respondent, now and at times hereafter saving and reserving unto himself all and all manner of advantage by exception and otherwise to the many errors and imperfections in said bill contained, for answer thereunto or to so much thereof as he is advised is important or necessary for him to make answer unto, answering saith: He denies each and every allegation and statement in said bill contained, except such of said allegations as are by this answer expressly and in so many words admitted.

This respondent is informed, and believes it to be true, that said John A. Horbach did settle upon and improve the lands in said bill described under the pre-emption act of 1841, and on the 21st day of November, 1857, proved

to the satisfaction of the register and receiver of the Omaha land office and district that he had so settled upon and improved said land as is required by said act, entitled "An act to appropriate the proceeds of the sale
38 of the public lands and to grant pre-emption rights," approved Sept. 4, 1841, and about that time and under said act did enter said lands with said register, and thereupon that officer did make, execute, and deliver to him, said Horbach, the usual patent certificate for said lands, as in said bill charged and set forth.

This respondent, further answering, saith he is informed, and believes it to be true, that on the day aforesaid, and from thence until the present time, the said Horbach has continued to be in the occupancy and possession of said premises, cultivating, improving, and inhabiting the same, as in said bill charged and set forth.

This respondent, further answering, saith as to whether said entry by said Horbach made was ever cancelled and declared void by the proper officer of the land department of the government, as in said bill set forth, this respondent has no knowledge, information, or belief except as appears in said bill, and therefore denies the allegations of the said bill in that regard, and asks that said complainant be put upon his proof.

This respondent, further answering, saith he has no knowledge whatever of the letter referred to in said bill, dated about the 1st day of November, 1860, addressed to the register and receiver of said Omaha land district, ordering said entry by said Horbach made to be cancelled upon the books of their office, and said land by him entered restored to the body of the
39 public lands, except as stated in said bill of complaint, and therefore denies all the allegations in that regard, and asks that the complainant be put to his proof.

This respondent, further answering, saith he has no knowledge, information, or belief as to whether said lands so entered by said Horbach was ever sold at public auction under the direction of said Commissioner, or whether any notice of such sale was given of any kind whatever, or whether said Horbach employed one Josiah S. McCormick to attend said sale as a bidder ostensibly in his own name, but in fact for and in behalf of said Horbach, as in said bill set forth, or whether said Horbach furnished to said McCormick any sum of money whatever with which to make payment for said lands, as in said bill alleged, except as stated in said bill, and therefore denies all the allegations of said bill in that behalf, and asks that the complainant be compelled to prove the same, and all the statements of the bill in relation thereto.

This respondent, further answering, saith he has no knowledge, information, or belief as to whether said Horbach was at the time mentioned, or at any other time, indebted to one Jonas Seely in any sum whatever, for professional service or otherwise, except as stated in said bill, and therefore this respondent denies the allegations in that regard, and asks that the complainant be put to his proof.

This respondent, further answering, saith he has no knowledge, in-
40 formation, or belief as to whether said McCormick ever conveyed by deed or otherwise said premises, or any portion thereof, to said Jonas Seely by the direction of said Horbach, or in any other way, or that said Horbach made any representations to said Seely, or that he offered to deliver the said deed of conveyance by said McCormick made to said Seely, except as stated in said bill of complaint, and therefore denies the same, and asks that the complainant be put to his proofs in that regard.

This respondent, further answering, saith he has no knowledge, information, or belief as to whether said Horbach made any representations to said Seely to induce him to accept said deed last aforesaid, or whether he prom-

ised and agreed to and with said Seely that he would forever warrant and defend the title to said lands to him conveyed by said McCormick as aforesaid except as stated in said bill, and he therefore denies each and every allegation of said bill in that regard, and asks that the complainant be put to his proof.

This respondent further saith he has been informed by his counsel lately, and long since his purchase of said premises of said Horbach, that one Mr. Porter and said complainant claimed to own the premises herein last described, but this respondent does not know, and has no information as to what title they claim under, or as to whether said Horbach had any knowledge of the negotiation or sale of said premises, or any portion thereof
41 by said Seely to complainant, or that said Horbach concealed the fact from said complainant during the negotiation, except as stated in said bill, and therefore denies each and every allegation in that regard, and asks that the complainant be put upon his proof.

This respondent, further answering, saith he has no knowledge, information, or belief as to whether the said complainant ever occupied and improved said premises, and with the knowledge of said Horbach improved the same to the amount of about one hundred and fifty dollars, and therefore denies the allegations of the bill in that regard, and asks that the complainant be put to his proof of these allegations; but this respondent denies positively the allegations of the bill that the complainant was ignorant of the claim of said Horbach at the time of his purchase from said Seely.

This respondent, further answering, saith he has no knowledge as to the manner in which said Horbach obtained his letters patent to said land, but admits that the letters patent were issued to said John A. Horbach at the time mentioned in said bill, nor has this respondent any knowledge whatever in regard to the government refunding the money so paid for said land by said McCormick except as in said bill set forth, and therefore denies each and every allegation in that behalf.

This respondent, further answering, saith he denies the allegations in said bill that the complainant was totally and wholly ignorant of the proceedings that were being had to restore to said Horbach his original pre-
42 emption entry, but respondent is informed and believes that the said complainant was fully advised of the rights of said Horbach at the time of his purchase of said Jonas Seely and of all the proceedings to maintain his said entry, and this respondent most distinctly denies that said proceedings were carried on secretly, or in any way concealed from complainant, as in said bill set forth, but says he was well and perfectly advised in all the proceedings relative thereto.

This respondent, further answering, saith on the 23d day April, 1862, said Horbach with Sallie, his wife, by their deed of conveyance, bearing date on that day, sold and conveyed said last-mentioned premises to this respondent, and said Horbach by said deed covenanted with the respondant that he was well seized of said premises and had a good and perfect title to the same free of all and every incumbrance, and that he would thereafter defend said premises against the lawful claims of all persons whomsoever; and further says that said deed last aforesaid was duly recorded in the office of the register of deeds of Douglas County, as in said bill charged and set forth; but this respondent denies particularly the allegation in said bill, that at the time of the making of said deed by said Horbach to this respondent had due or any notice whatever of the equities or claims of the complainant, if any he has as charged and set forth in said bill; but this respondant alleges the truth to be that he purchased said premises of said Horbach in person, and in the most perfect good faith, and *and* paid

43 therefor a full and adequate consideration, and at the time of said purchase and for a long time thereafter this respondent had no notice, information, or surmise that the complainant or any one else had any equity or claim of any kind or nature to said premises, but bought the same as aforesaid, after being first shown by said Horbach the letters patent to the tract of land hereinbefore described, including the lands in dispute, and therefore this respondent denies in so many words every allegation in said bill set forth charging this respondent in any way with notice of the equities of said complainant at the time of his purchase of said premises of said Horbach, if any he had or has.

This respondant, further answering, saith he is informed and believes, and therefore charges the truth to be, that from the date of said Horbach's entry of said premises to the present time the only occupant has been the said John A. Horbach, and this respondent alleges and charges the truth to be that said complainant never resided upon or occupied said premises as charged in said bill, but says at the time of said entry by Horbach of said premises, and until the present time, there has been no occupant of said premises except said Horbach or tenants under him, that said premises in dispute were at the time of the purchase by respondent and are at this time vacant land. This respondant denies all and all manner of unlawful

44 combinations and confederacy to which he is in said bill charged, without that any other matter or thing by this answer not fully answered, avoided, traversed, or denied is true. All of which matters and things this respondent is and will be ready and willing to aver, maintain, and prove as this hon. court shall direct, and asks to be thence dismissed with costs.

REDICK & BRIGGS,
Sol's for said Wiggins, resp.

STATE OF PENNSYLVANIA, *Alleghany County, ss:*

Richard Wiggins, being by me first duly sworn, deposes and says he is one of the respondants in this action, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own personal knowledge except as to those matters therein stated on information and belief, and as to those be believes it to be true.

R. WIGGIN.

Subscribed in my presence and sworn to before me this 28th day of August, A. D. 1863.
[SEAL.] H. E. DAVIS, *Notary Public.*

ALLEGHANY COUNTY, *State of Pennsylvania, ss:*

45 I, Henry Eaton, prothonotary of the court of common pleas in and for the county of Alleghany, in the commonwealth of Pennsylvania, the same being a court of law and record, do by these presents certify that H. E. Davis, esquire, before whom the foregoing answer was taken and who has thereunto in his own proper handwriting subscribed his name, was at that time and now is a notary public in and for the said county, duly commissioned and sworn and authorized by law to take acknowledgments, administer oaths, &c., to all whose acts as such due faith and credit are, and of right ought to be given throughout the United States and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Pittsburg, in the said county, this 28th day of August, in the year of our Lord one thousand eight hundred and sixty-three, and of the sovereignty and independence of the United States of America the eighty-eighth.
[SEAL.] HENRY EATON, *Prothonotary.*

And thereupon, on the 18th day of Sept., 1863, were filed interrogatories, the same being in words and figures following, to wit:

Interrogatories to be administered to Richard Wiggin, of Alleghany City, in the State of Pennsylvana, a witness to be produced, sworn, and
46 examined in a certain cause now pending in the district court of the 1st judicial district of the Territory of Nebraska, setting within and for the county of Douglas, in chancery, wherein James Brown is complainant and John A. Horbach and Richard Wiggin is defendant, under a commission issued out of said court directed to George Kelly of said Alleghany City, a commissioner on the part of said defendants.

First interrogatory. What is you name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainant and defendants, in the title to these interrogatories named, or either of them and which of them, and for how long have you known them respectively? Declare the truth fully.

Third interrogatory. State whether you ever purchased any land of said John A. Horbach, and if so, state where the land was situated, and a description thereof, and also state when you purchased the same and whether or not you paid any consideration therefor, and if you did, state to whom you paid it, when and what was the amount of the same and whether such consideration was money or property. Declare the truth fully.

Fourth interrogatory. Did you ever see the premises in question, and if so, when?

Fifth interrogatory. State, at the time of your purchase of said premises of said Horbach, what knowledge you had, if any, that there were
47 incumbrances on the same, or persons claiming title to said premises other than said Harbach, also state whether you had or saw any evidences of said Horbach's title, and if so, state what it was. Declare the truth fully.

Lastly. Do you know or can you set forth any other matter or thing which may tend to the benefit of either of the parties or material to the subject of this examination, if so, set the same forth all the circumstances according to the best of your knowledge.

REDICK & BRIGGS,
Solicitors for Defendants.

And thereupon, afterwards, to wit, on the 1st day of October, 1863, was issued the commission to take depositions, the same being in words and figures following, to wit:

The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery, to George Kelly, esq'r, of Alleghany City, Penn., greeting:

Know you that we having full faith in your prudence and competency have appointed you commissioner, and by these presents do authorise and require you to examine upon interrogatories annexed to this commission, Richard Wiggin, of Alleghany City, Pennsylvania, in a certain cause pending in this court, wherein James Brown is Complainant and John A. Horbach and Richard Wiggin are defendants, on oath, to be by you administered, to take and certify the depositions of the said witnesses and return the
48 same in accordance with the statute in such case made and provided.

Witness the Hon. Wm. P. Kellogg, judge of the first judicial district, at the city of Omaha, on the 1st day of October, A. D. 1863.

[SEAL.] JOHN H. KELLOM, *Clerk*,
By H. M. DICKINSON, *Dept. Clk.*

And thereupon, to wit, on the 16th day of November, 1863, depositions in this case were filed in words and figures following, to wit:

Depositions of Richard Wiggin, of Alleghany City, Alleghany County, State of Pennsylvania, a witness sworn and examined in a certain action now pending in the district court of the 1st judicial district of the Territory of Nebraska, sitting within and for the county of Douglas, in chancery, wherein James Brown is complainant and John A. Horbach and Richard Wiggin are defendants, under a commission issued out of said court directed to George Kelly, of said Alleghany City, a commissioner on the part of said defendants, as appears by the commission, &c., hereto attached. Said depositions taken by me at my office this 24th day of October, A. D. 1863, as hereinafter duly certified.

Richard Wiggin, of Alleghany City, Alleghany County, State of Pennsylvania, of lawful age, being first duly sworn by me as hereinafter certified, deposes as follows:

49 First interrogatory. What is your name, age, occupation, and place of residence?

Answer. My name is Richard Wiggin; age, thirty-nine years; occupation, "passenger conductor" on Pittsburgh, Fort Wayne, and Chicago Railway Company; residence, Alleghany City, Alleghany County, State of Pennsylvania.

Second interrogatory. Do you know the parties, complainant and defendants, in the title to these interrogatories named, or either of them, and which of them, and for how long have you known them respectively? Declare the truth fully.

Answer. Do not know either of the complainants. Have known John A. Horbach, defendant, for nine years.

Third interrogatory. State whether you ever purchased any land of said John A. Horbach, and if so, state where the land was situated and a description thereof, and also state when you purchased the same, and whether or not you paid any consideration therefor; and if you did, state to whom you paid it, when and what was the amount of the same, and whether such consideration was money or property.

Answer. I did purchase land of said John A. Horbach. Said land situated in Omaha City, Douglas County, Nebraska Territory, and is ten (10) acres off of the northwest corner of the one hundred and sixty acres pre-empted by said John A. Horbach. I purchased said land on the fourteenth

50 day of April, A. D. eighteen hundred and sixty-two, (1862,) I paid a consideration to said John A. Horbach of four hundred dollars ($400) for said land in the following manner: Upon receipt of the deed I sent said John A. Horbach by mail a draft on New York City for one hundred dollars, ($100,) and my note as follows, viz: One note for one hundred dollars, payable first day of June, A. D. eighteen hundred and sixty-two, (1862,) and one note for two hundred dollars, payable on November, fifteenth day, A. D. eighteen hundred and sixty-two, (1862.) Said notes were paid at maturity, in cash, to said John A. Horbach.

Fourth interrogatory. Did you ever see the premises in question, and if so, when?

Answer. I was on the premises in the spring of A. D. eighteen hundred and fifty-six, (1856.)

Fifth interrogatory. State at the time of your purchase of said premises of said John A. Horbach, what knowledge you had, if any, that there were incumbrances on the same or persons claiming title to said premises other than said Horbach, and also state whether you had or saw any evidences of said Horbach's title; and if so, state what it was. Declare the truth fully.

Answer. I had no knowledge whatever of any incumbrances on said land or premises, and had no knowledge of any person or persons claiming title to said premises other than said John A. Horbach. To the best of my knowledge and belief, I saw the "patent" granted to said John A. Horbach from United States government.

51 Lastly. Do you know or can you set forth any other matter or thing which may tend to the benefit of either of the parties or material to the subject of this examination; if so, set the same forth with all the circumstances according to the best of your knowledge.

Answer. I do not know of any matter or thing more that would tend to the benefit of either of the parties the subject of this examination.

RICHARD WIGGIN.

STATE OF PENNSYLVANIA, *City of Alleghany, ss:*

Be it known that I, George Kelly, of the city of Alleghany, county of Alleghany, and State aforesaid, commissioner in the attached commission named, do hereby certify that the above-named Richard Wiggin was by me, on this 24th day of October, A. D. 1863, at my office, in said city, duly sworn to testify the truth, the whole truth, and nothing but the truth, before answering the aforesaid interrogations; that the foregoing deposition by him subscribed in his own proper handwriting was reduced to writing by me, and by said witness duly subscribed in my presence, and taken as aforesaid at the time and place herein named,

Witness my hand and seal, at the city of Alleghany, this 24th day of October, A. D. 1863, as aforesaid.

GEORGE KELLY. [L. S.]

52 And thereupon, on the 26th day of Sept., 1863, replication was filed in this cause, in words and figures following, to wit:

In chancery.

The replication of James Brown, complainant to the answer of Richard Wiggin, one of the defendants.

This repliant, saving and reserving to himself all benefit of exception which may be had or taken to the said answer of the said defendant, for replication thereunto, says he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer is untrue, uncertain, and insufficient to be replied unto, without this, that any other matter or thing in the said answer contained, and not herein and hereby well and sufficiently replied unto confessed and avoided, traversed or denied, is true. All which matters and things this repliant will aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill he has already prayed.

JAS. M. WOOLWORTH, *Sol. for Compl't.*

And thereupon, afterwards, to wit, on the 21 day of Oct., 1863, was filed an order of reference to master, in words and figures following, to wit:

53 District court, in chancery, Douglas county, Omaha, October 20, 1863, before John H. Kellom, register.

JAMES BROWN
vs.
JOHN A. HORBACH *et al.*

On motion of James M. Woolworth, solicitor for complainant, it is ordered that it be referred to D. Gantt, one of the masters of this court, to hear, take, and report the testimony of the parties to this cause.

[SEAL.] J. H. KELLOM, *Clerk.*

And thereupon, on the 12th day of Nov., 1863, a motion and affidavit were filed and appear of record in words and figures following, to wit:

District court, Douglas county, in chancery.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH *et al.*, def'ts.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Clinton Briggs, being by me first duly sworn, deposes and says that at the time said Horbach was referred to answer the bill of complaint, he was confined to his bed with a dangerous illness, which rendered him wholly unable to attend to any kind of business until within the past few weeks; and this is the reason why said Horbach did not file his answer when required by the order of this court; that said Horbach has a good and meritorious defense to a portion of the matters set up in said bill, and now able to make
54 such defense by answer. Said def't Horbach therefore asks that the default entered against him may be set aside, and he be permitted to file his answer at such time as the court may direct.

CLINTON BRIGGS.

Subscribed in my presence and sworn to before me this 12 day of Nov., 1863.

J. H. KELLOM, *Clerk.*

And thereupon, afterwards, to wit, on the 7th day of April, A. D. 1864, the motion of defendant Horbach to open default taken against him and for leave to answer came on to be heard, and was argued by counsel; whereupon it is ordered said motion be and is hereby overruled.

And thereupon, to wit, on the 2 day of April, 1864, an affidavit was filed in this case, the same being in words and figures following, to wit:

JAMES BROWN
vs.
JOHN A. HORBACH *et al.* } In chancery.

DOUGLAS COUNTY, *ss:*

James M. Woolworth, being duly sworn, says that about the time within which defendant Horbach was ruled to answer in these cause s expired, Mr. Redick applied to deponent to extend the time on account of said Horbach's sickness, which deponent consented to do; that said Horbach was
55 about the streets some weeks before last term, and deponent frequently urged said Redick and Mr. Briggs to file his answer; that after their motion to set aside default was filed, deponent called it up in court to be argued, when it being understood that no business would be done except by consent, said Redick refused to let his said motion be argued, and for that reason this matter has laid over till this time.

JAS. M. WOOLWORTH.

Sworn to before me this 2nd day of April, 1864.

J. H. KELLOM, *Clerk.*

And thereupon, afterward, to wit, on the 9th day of April, 1864, was filed a motion and affidavit for leave to file supplemental answer in words and figures following, to wit:

In district court, Douglas County, in chancery.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants.

And now comes said def't Wiggins, and prays the court to grant him leave to file a supplemental answer in this case to complainant's bill for the reasons appearing in the affidavit herewith shown the court. The matters which this def't desires to introduce into the record in this case by said supplemental answer are also herewith shown the court.

REDICK & BRIGGS, *Solicitors for Def'ts.*

56 In chancery, district court, Douglas County.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

John I. Redick, being by me first duly sworn, deposes and says he is one of the solicitors for said def't Wiggins, who is a non-resident of and absent from said Territory; that since the filing of his answer in this case to complainant's bill, to wit, in the month of January, 1864, said defendant learned for the first time the matters and defense hereinafter stated, and which he is advised is material to his defense in this case, and desires to have introduced into the record in this case by way of a supplemental answer, which matters and defense are in the words and figures following, viz: "That there was only thirty days' notice given of the sale of the lands under the special sale mentioned in said complainant's bill, when the instructions of the land department at Washington to the register and receiver of the Omaha land district required a notice of 60 days to be given before the sale should take place, but that only said 30 days' notice was given, and in violation of said instructions, and the laws of the U. S. said sale took place; that the day before said sale took place, a large number of the prominent citizens of Omaha, Neb., entered into a secret arrangement and combination for the purpose of preventing a fair sale and defrauding the United States, by which
57 it was planned, agreed, and arranged by and between said citizens that one of their number should bid off a part of the lands offered at such sale at one dollar and twenty-five cents per acre, and that another of said citizens would bid off the remainder of said lands at the same price, and that they should be protected by force in bidding off the same according to said arrangements, and that if any other person should bid or attempt to bid against them, such person should be forcibly removed from the land office, so as to prevent him from bidding against said citizens; that at the hour when said sale was ordered to take place, said citizens assembled in large numbers at said land office of the United States for the purpose of carrying into effect the aforesaid unlawful arrangement, many of them armed with deadly weapons, and threatened to use the most extreme violence on the person of any one who should even attempt to bid on said lands against the citizens aforesaid; that said lands were all worth at least fifty dollars per acre, and many persons desired to bid in the same, but were prevented by the force, threats, and intimations of said citizens from so doing, and in consequence said lands only sold for $ per acre or thereabouts; that in consideration of the above facts, the land department at Washington vacated said sale."

And affiant further says that said defendant was totally ignorant of all the foregoing facts relative to said special sale at the time he filed his origi-

nal answer in this case, and that he first learned said facts in the said
58 month of January, 1864, and had he, said def't, known said facts at the time of filing his said answer, he would have incorporated said facts in the same; that very soon after learning this new defense, said def't, by his solicitors, applied to Mr. Woolworth, solicitor for complainant, for permission to amend his answer then on file so as to make such defense, but said Woolworth never fully gave his consent to the same, and finding that said defense could not in that way be introduced into said answer, the solicitors for said def't hoped to get the full benefit thereof, by incorporating the same in the answer of the co-defendant, Horbach, but the court having overruled the application for leave to file the answer of said Horbach containing such defense, the def't Wiggin is now compelled to make this application for leave to file a supplemental answer, making said defense in the words hereinafter stated.

And affiant further says that this application is not made for delay, but that justice may be done between the parties. And that should leave to file a supplemental answer be granted these def'ts will be ready to go to the hearing without an hour's delay.

J. I. REDICK.

Subscribed in my presence and sworn to before me this 9th day of April, A. D. 1864.

J. H. KELLOM, *Clerk.*

And thereupon, to wit, on the 11th day of April, 1864, a motion
59 was filed in this case in words and figures following, to wit :

District court, Douglas County, in chancery.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, def'ts.

And now come the said defendants and pray the court to suppress the depositions of the witness Andrew J. Harscom taken in this cause on the part of said complainant, on the ground that it appears from the testimony of said Hanscom, and other testimony in this case, that he, the said Hanscom, denied all the facts to which he testified in the relation of an attorney for said Horbach, and that said Hanscom had no right to divulge the matter communicated to him in the confidential relation of attorney and client.

REDICK & BRIGGS,
Solicitors for Defendants.

And thereupon, on the same day and year aforesaid, was filed the supplemental answer of Richard Wiggin, being in words and figures following, to wit :

In district court, Douglas County, in chancery.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants.

The supplemental answer of Richard Wiggin, one of the defendants, to the bill of complaint of said complainants, leave of the court having been obtained.

60 This defendant further shows to your honor, by way of supplemental answer, that there was only about thirty days' notice given of

the sale of the lands under the special sale mentioned in said complainant's bill set forth when the instructions of the land department at Washington to register and receiver of the Omaha land district, required a notice of sixty days to be given before the sale should take place, but that said notice was not given, and in violation of said instructions and the laws of the United States, said sale took place; that the day before said sale took place a large number of the prominent citizens of Omaha, Neb., entered into a secret arrangement and combination for the purpose of preventing a fair sale, and defrauding the United States, by which it was planned, agreed, and arranged by and between said citizens that one of the number should bid off a part of the lands offered at such sale at one dollar and twenty-five cents per acre, and that another of said citizens should bid off the remainder of said lands at the same price, and that they would be protected in bidding off the same by force, according to said arrangement, and that if any other person should bid or attempt to bid against them such person should be forcibly removed from said land office so as to prevent him from bidding against said citizens; that at the hour when said sale was ordered to take place, said citizens assembled in large numbers at said land office of
61 the United States for the purpose of carrying into effect the aforesaid unlawful arrangement, many of them armed with deadly weapons, and threatened to use the most extreme violence on the person of any one who should even attempt to bid on said lands against the citizens aforesaid; that said lands were worth at least fifty dollars per acre, and many persons desired to bid on the same, but were prevented from doing so by force, threats, and intimations of said citizens, and in consequence said lands were sold for the sum of five dollars per acre or less, and in consideration of said facts the land department at Washington vacated said sale. All of which matters and things this defendant stands ready to aver, prove, as this hon. court shall direct.

REDICK & BRIGGS,
Solicitors for Defendants.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

John I. Redick, being by me first duly sworn, deposes, and says: I am one of the counsel for the defendants in the above-entitled cause; that the def't Wiggin is a non-resident of and absent from this Territory at this time; that this affiant has heard read the foregoing supplemental answer, and knows the contents thereof, and that the facts therein stated, are true as he verily believes.

JOHN I. REDICK.

Subscribed in my presence and sworn to before me this 11th day of April, 1864.

DAN. GANTT,
[SEAL.] *Notary Public for Douglas Co., N. T.*

62 And thereupon, on the same day and year aforesaid, was filed a replication to sup. ans. in words and figures following, to wit:

In chancery.

The replication of James Brown to the supplemental answer of Richard Wiggin, defendant.

This repliant, now and at all times saving to himself all exceptions to said supplemental answer, for replication thereunto says, his bill of com-

plaint is sure, certain, and sufficient in law to be answered unto, and said supplemental answer is untrue, uncertain, and insufficient to be replied unto, without that any other matter or thing in said answer contained not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this repliant. All which matters and things this repliant will aver, maintain, and prove as this honorable court shall direct, and prays as in his said bill he has already prayed.

JAS. M. WOOLWORTH, *Sol. for Compl't.*

And thereupon, afterwards, to wit, on the 13th day of April, A. D. 1864, were filed in the clerk's office the depositions of Jesse Lowe, E. V. Smith, M. T. Patrick, A. J. Hanscom, Augustus Macon, and James Brown, which are in words and figures following, to wit:

Depositions of witnesses taken in a certain cause pending in the dis-
63 trict court of Douglas County, Nebraska, wherein James Brown is complainant, and John Horbach and Richard Wiggin are defendants, in pursuance of an order of reference made by said court, to me directed, dated .

Upon notice to parties they met at my office Feb. 25, 1864, at 10 o'clock a. m. Present: James M. Woolworth, sol. for complainants; Redick & Briggs, sol. defendants.

Jesse Lowe, a witness produced, sworn, and examined on part of complainant says:

Ques. 1. Are you acquainted with John A. Horbach, Josiah S. McCormick, Jonas Seely, and A. J. Hanscom? If so, how long have you known them, respectively?

Ans. I have known them ever since they have been in this country.

Ques. 2. Were you ever present at any conversation between said Horbach, Jonas Seeley, and A. J. Hanscom, relative to the two latter assisting in procuring the title to the pre-emption claim of said Horbach at the public sale of the land by the United States? If so, when and where did the same take place, and what was said at the time by said parties?

(Objected to by defendant Wiggins; 1st, as leading; 2d, immaterial, not being shown that he was present at the time of the conversation; and by def't Horbach, as leading and immaterial.)

Ans. It was in the winter of 1860, on the pavement in front of
64 Bridge's Block; I was present with Horbach, Hanscom, and Seely. It was after a tract of land, known as the Horbach tract, was advertised for sale by the land officers of Omaha, and before the sale of the same. Mr. Horbach agreed with Hanscom and Seely for their assistance in his land-matter, in procuring title to his land, by agreeing to pay them five hundred dollars each.

3. Who bid said land off at said sale, and for whom did the bidder bid the same off? State your means of knowledge.

(Objected to by def't Wiggin as immaterial, he not being present, and knew anything of the transaction; and by defendant Horbach, as irrelevant, immaterial, and not the best evidence.)

Ans. It was bid off by Josiah S. McCormick for John A. Horbach. I know it from what transpired at the time of the sale and before and after.

Cross-examination.

1. You say that an agreement was fixed up between Horbach and the city of Omaha, do you?

Ans. Yes, I do.

2. What was the arrangement, and was it in writing?

Ans. I know what the arrangement was, but don't whether it was in writing or not. It was that Horbach was to have a portion and the city the other portion of the land.

3. What necessity and why did Horbach have Hanscom and Seely help him to do that?

65 (Objected to by complainant, as not proper cross-examination, immaterial, irrelevant, and calls for the opinion of the witness.)

Ans. I don't know unless it was that Hanscom was one of the referees between Horbach and the city, and Jonas Seely always co-operated with Hanscom.)

4. Do you mean to be understood that they were employed simply to make the negotiation with the city?

Ans. No; the agreement was that they were to help him through to the end.

5. What assistance, if any, was anticipated or talked of by Horbach after the negotiation was made with the city from Hanscom, Seely, yourself, and others?

(Objected to by complainants as not proper cross-examination, immaterial, irrelevant, and it does not appear that the witness had any knowledge or means of knowledge of Horbach's anticipations.)

Ans. He talked that he might possibly have trouble at the land sale and desired them to be present.

6. What did he say might be necessary to do at the land sale to protect him in bidding in the land under the engagement?

(Objected to by complainant as not proper cross-examination, immaterial and irrelevant.)

Ans. I don't remember his precise words, but he considered himself as arrayed against the whole city. He did not know what might transpire at the sale as it was sometimes pretty rough on days of sale.

7. Do you not mean that the bargain was that you should all
66 protect Horbach in bidding in the tract at one dollars twenty-five, cents per acre?

Ans. We were all to protect him in bidding the land in by himself or any other person, but not no particular price was agreed upon to be paid for the land.

8. Do you not remember the arrangement was that John McCormick was to bid in one half of this land and Monell the other half?

Ans. That was the first agreement.

9. When was that conversation had which you spoke of having with Horbach and those other men?

Ans. It was two or three days before the sale.

10. Have you had any conversation with Mr. Horbach since the sale?

Ans. Nothing in reference to this land.

11. Was that arrangement or negotiation spoken of by you, by which the city was to get a portion and John A. Horbach a portion of the land, carried into effect as agreed upon?

Ans. It was not.

12. What was the value of this Horbach tract at the time of the sale?

(Objected to by compl't as immaterial, irrelevant, and not proper cross-examination.)

Ans. The tract was worth fifty dollars per acre.

JESSE LOWE.

By consent of the solicitors of the parties, adjourned till February
67 26, 1864, at 11 o'clock a. m.

Feb. 26, 1864, met at my office, pursuant to adjournment.

Present: Woolworth, sol. for complainant; Redick & Briggs, sol's for defendants.

E. V. Smith, a witness produced, sworn, and examined on part of complainant, says:

1. Where do you reside, and how long have you resided there?

Ans. I reside in Omaha, and have resided there about eight years.

2. Do you know John A. Horbach, Josiah S. McCormick, Jonas Seely, and A. J. Hanscom, or either of them? if so, how long have you known them, respectively, or such of them as you do know?

Ans. I do them all for nearly eight years, except McCormick, and have known him for five or six years.

3. Are you acquainted with the south half of the northeast quarter of the south half of the northwest quarter of section fifteen, township fifteen, range thirteen east, the same being the premises claimed by pre-emption by said John A. Horbach? if so, how long have you known the same?

Ans. I am acquainted with the premises about six years.

4. State whether or not you were present at the public sale of said land made by the register and receiver of the Omaha land office in December, 1860?

(Objected to by def'ts, on the ground that the matter is immaterial.)

68 Ans. I was.

5. State who bid said land in at said sale?

(Objected to by defendants, as immaterial, and incompetent, the records of the land office being the best evidence.)

Ans. Mr. Josiah S. McCormick.

6. State, if you know, for whom he bid the same in and your means of knowledge on the subject.

(Objected to by def'ts as immaterial and incompetent.)

Ans. I suppose he bid it in for Mr. Horbach, as Mr. Horbach told me that he was going to have him bid it in for him.

7. State whether or not you ever had any conversation with said Horbach as to conveyances made, or to be made by McCormick, of said premises, or any part thereof; and if so, when, where, and what did he say in that regard?

(Objected to by def'ts as immaterial, and it does not appear that def't Wiggins was present at any such conversation.)

Ans. I don't recollect the time or place, but he told me he was going to have it deeded to his mother-in-law.

8. State whether or not this conversation took place within three months of the time of sale.

Ans. It was within that time.

9. State whether or not he assigned any, and if so, what, reason he had for having said conveyance so made.

(Objected to by def'ts as immaterial, leading, and it does not appear

69 that Wiggin was present.)

Ans. The reason he gave was that he had deeded some lots under his pre-emption; he didn't want to give them the title to them.

10. State whether or not at said sale the said Horbach bid on said land.

(Objected to by def'ts as immaterial and leading.)

Ans. I don't think he did; don't recollect that he did.

Cross-examination.

1. Was you present at the sale?

Ans. I was.

2. How many people, in your opinion, were present at the sale?

Ans. I don't know that I can give any accurate idea of the number; the office was full, and some could not get in.

8. Will you please name all those you know who were present?

Ans. There was Josiah S. McCormick—I think John McCormick, also; Mr. Horbach, Dr. Monell, C. W. Hamilton, Mr. Hanscom, Mr. Seeley, Mat. Patrick, Jesse Lowe, I think Mr. Meredith. I don't think of any more names now.

4. Who else bid on this land except Mr. McCormick on that occasion?

Ans. Charles W. Hamilton.

5. Who requested you to attend the sale on that day, if any one?

Ans. No one requested me to attend the sale.

70 6. What do you know, if anything, about an arrangement being made the night previous to the sale by which Horbach was to be protected in bidding in his portion of the land, whatever it was, on that occasion?

(Objected to by complainant as not proper cross-examination, and irrelevant.)

Ans. I don't think any arrangement was made when he was to be protected.

7. What was the arrangement, and was there not some arrangement of some kind made and talked by Hanscom, Jesse Low, Mat. Patrick, yourself, perhaps, and others, in regard to assisting each other in bidding in your land at government sale? Please state what it was.

(Objected to by complainant as not proper cross-examination, immaterial, and irrelevant.)

Ans. I don't know anything about such an arrangement as that.

8. Was there anything said between yourself and others in regard to it?

(Objected to by complainant as not proper cross-examination, immaterial, and irrelevant.)

Ans. No, sir; not that I know of. . .

9. Will you swear that John A. Horbach did not bid on that land on that occasion?

Ans. I would not swear that he did not, but I don't think that he did.

E. V. SMITH.

Matthew T. Patrick, a witness produced, sworn, and examined on part of complainant, says:

71 1. Are you acquainted with John A. Horbach and Josiah S. McCormick? if so, how long have you known them respectively?

Ans. I am. I have known them since the summer of 1859.

2. State whether or not you ever had any conversation with them as to whom McCormick bid in the Horbach pre-emption claim for when the same was sold by the government at public sale. If so, when did that conversation take place, and what was said in that regard?

(Objected to by defendant Horbach as leading, immaterial, and by defendant Wiggin because it is immaterial, irrelevant, and it does not appear that he was present and knew any of the conversation, if any there were.)

Ans. About the 15 of December, 1860, Mr. Horbach told me if Mr. McCormick bid on his land not to interfere with him, for he had made arrangements for him to bid for him. I don't know as I had any conversation with Mr. McCormick.

Cross-examined.

1. What arrangement did he allude to when he requested you not to interfere with him?

(Objected to by complainant as calling for the opinion of the witness, and not the best evidence.)

Ans. I took it that he alluded to the arrangement that Mr. McCormick was to buy the land for him.

2. Do you not remember, and did he not state to you in substance,
72 the arrangement, as follows: That the city of Omaha was to buy in a portion, Mr. Monell bidding for it, and Mr. McCormick to buy the balance in for John A. Horbach?

(Objected to by complainant, on the ground that it does not call for what was said, but the substance merely.)

Ans. I have not it clear in my head whether he did or not. My recollection is not clear on that, but it is clear that his part was to be bid in by McCormick.

3. Do you not remember that the arrangement was this, as you understood it from Horbach and others, that the city, by Monell, was to bid in a portion of the tract, and John McCormick was to buy in the other portion for Horbach?

Ans. As for John McCormick, I never heard his name mentioned in connection with the sale.

4. Will you swear that you heard mentioned at that time, by Horbach or any one else, any other name in connection with the bidding off the land except the name McCormick?

Ans. I have no recollection of hearing used any name except Dick McCormick.

5. Did Horbach tell you that by the arrangement made, spoken of by him at the time, Dick McCormick was to bid off the land for him?

Ans. I answer this question as I did the first question, that he told me not to interfere with Dick, for he was to bid for him.

73 6. When he requested you not to interfere, did he mean thereby, and did you so understand him, that if anybody else bid you were to interfere with them?

(Objected to by complainant as calling for the opinion of the witness, and not a proper cross-examination.)

Ans. Yes.

7. Who else was there for the same purpose? Name them, or some of them.

(Objected by complainant as not proper cross-examination, and immaterial and irrelevant.)

Ans. E. V. Smith, Doct. Seymour, John A. Horbach, Jesse Lowe, and A. J. Hanscom.

8. If outsiders, interlopers, should have come in and bid against those claiming the land, what would have been the result, in your opinion?

(Objected to by complainant as not proper cross-examination, and calls for the opinion of the witness.)

Ans. Judging from some other cases, there would have been some loud talking, but nobody hurt—that there would have been a fuss or a row.

9. State, from what you know of that public sale, whether it would have been safe for any outsider to have bid against Horbach or McCormick, and whether, in your opinion, he would not have received a severe punishment of some kind.

(Objected to by complainant as not proper cross-examination, immaterial, irrelevant, and calls for the opinion of the witness.)

74 Ans. I suppose he would have been punished in some way or put out of the room.

10. Who invited you to attend the sale, to help protect Horbach in bidding on that land?

(Objected to by complainant as not proper cross-examination, immaterial, and irrelevant.)

Ans. John A. Horbach; and I have reason to believe he notified all he wanted to attend them.

11. Who was present when Horbach told you as you before herein stated, and what was it?

Ans. I believe it was in Bridge's Block building, in the land office, and there were others by, but I do not know whether they heard the conversation. Hanscom, Jesse Lowe, E. V. Smith, Dick McCormick, and others; likely Dick heard the conversation, but I am not certain.

Re-examination.

1. What is the proper name of Dick McCormick?

Ans. He writes his name Josiah S.

M. T. PATRICK.

By consent of solicitors of parties, adjourned till Feb. 27th, 1864.

DAN. GANTT, *Master.*

Feb. 27th, 1864, met pursuant to adjournment.

Present: J. M. Woolworth, sol. for complainant; Redick & Briggs, sol's for def't.

A. J. Hanscom, a witness produced, sworn, and examined on part of complainant, says:

1. What is your place of residence, and how long have you resided
75 there, and what business have you been engaged in during that time?

Ans. My place of residence is the city of Omaha, and have resided there since the fall of 1854. I have been engaged part of the time in practicing law; part of the time in farming; and latterly, in selling goods.

2. Do you know the parties to this suit, or any, or either of them? If so, how long have you known them, respectively, or such of them as you do know?

Ans. I know Brown and Horbach, and have known them for four or five years, but do not know defendant Wiggin.

3. State whether or not you were acquainted with the south half of the northwest quarter, and the south half of the northeast quarter of section fifteen, township fifteen, range thirteen east of the sixth principal meridian, being the premises near this city pre-empted by defendant Horbach. If so, how long have you known them?

(Objected to by defendant as leading, immaterial, the last part of the question.)

Ans. I am acquainted with the tract of land pre-empted by Horbach, and have been since I came to this Territory.

4. State, if you know, whether or not the said premises were ever sold by the United States. If so, when, to whom, where, in what manner, and for what sum?

(Objected to by deft. as leading, immaterial, and irrelevant, and not the best evidence.)

Ans. They were sold in December, 1860, at the land office, by the
76 register of said office, in Omaha, to Josiah S. McCormick. They were sold at public sale, and I do not now remember the amount of the sale.

5. State, if you know, whether the said McCormick bid in said premises for himself or for any other person. If for any other person, declare for whom and your means of knowledge.

(Objected to by def't, 1st, as leading; 2nd, immaterial and irrelevant; and 3d, it does not appear that the def't Wiggins had any knowledge of this matter; and 4th, if it shall hereafter appear that the witness was acting in any manner as attorney for the defendant Horbach in procuring title to this land, I do object, on the ground that he obtained his information in confidence, and has no right to declare it.)

Ans. He did not bid it in for himself; bid it in for John A. Horbach. I was so informed by Mr. Horbach, and also heard both Messrs. Horbach and McCormick, speak in relation to it.

6. When were you so informed by Horbach, and when did you hear Horbach and McCormick speak in relation to it.

(Objected to by def't, 1st, it is leading; 2d, immaterial and irrelevant; 3d, it does not appear that the def't Wiggin had any knowledge of this matter; 4th, if it shall appear hereafter that the witness was acting in any manner for def't Horbach in procuring title to this land, I do object, on the ground that he obtained his information in confidence, and has no right to disclose it.)

77 Ans. Previous to the sale Mr. Horbach told me if it was necessary to do so he would have McCormick to bid off for him, and after the sale at Jonas Seely's office, on the same day of the sale I think, Horbach said that McCormick had it off for him, and would deed the land in question as he had agreed to, and McCormick did make a deed to Seely, under the direction of Horbach, in accordance with Horbach's agreement. On the same day after the sale I heard Horback and McCormick at Seely's office talk in relation to it, together with Seely and myself.

(Then defendants object to the answer given, upon the further ground that it is not responsive to the question.)

7. State fully what was said at the time mentioned by you in your answer to the last above interrogatory by the respective parties at the same.

(Objected to by def'ts, 1st, as immaterial and irrelevant; 2d, it does not appear that the def't Wiggin had any knowledge of this matter; 3, if it shall appear hereafter that the witness was acting in any manner for def't Horbach in procuring title to this land, I do object, on the ground that he obtained his information in confidence, and has no right to reveal it.)

Ans. I don't know that I am able to state fully all that was said, but the manner in which the land was bid off and for whom it was bid off was talked over by McCormick, Horbach, Seely, and myself.

(Here def'ts object to anything that was said by Seely.)

78 8. Do you know, and if so, state, what was the nature of the consideration for the deed made by McCormick to Seely?

(Objected to by def'ts 1st, as immaterial and irrelevant; 2nd, it does not appear that the defendant Wiggin had any knowledge of this matter; 3rd, if it shall appear hereafter that the witness was acting in any manner for def't Horbach in procuring title to this land, I do object, on the ground that he obtained his information in confidence, and has no right to reveal or disclose it.)

Ans. I do know. It was in consideration for services rendered by Mr. Seely, together with my assistance in procuring or assisting to procure the title to said land for said Horbach.

9. Do you know, and if so, state, whether or not at the time you have already mentiond any promises were made by said Horbach to said Seely relative to making good the title of the premises conveyed by McCormick to Seely, in case the McCormick purchase should be set aside or vacated. If so what were the same and what was said by yourself or any other person in that regard at that time?

(Objected to by def'ts, 1st, as leading; 2nd, immaterial and irrelevant; 3rd, it does not appear that the def't Wiggin had any knowledge of this matter; 4th, if it shall appear hereafter that the witness was acting in any manner for def't Horbach in procuring title to this land, I do object,
79 on the ground that he obtained his information in confidence and has no right to disclose it; and 5th, it is not the best evidence.)

Ans. At the time of the the conversation alluded to, which was the time of the making of the deed by McCormick to Seely, I asked Mr. Horbach what he was going to have done with the balance of the land over and above the ten acres deeded to Seely, and he said he was going to have McCormick deed it to his mother-in-law. I then asked him what he would do in case the sale was set aside in relation to the ten acres deeded to Seely, and he said that in case the sale was set aside or the title conveyed by McCormick failed in any way, and he afterwards acquired title by virtue of his original pre-emption or in any other manner, that he would make the title good to that ten acres, and would, whatever consequence was necessary to do so; and upon that representation Mr. Seely accepted the deed in full payment for the services rendered, with the express understanding and agreement, that in case the title did fail and Horbach or any of his friends under his control, obtained title to the land afterwards, that that title of ten acres conveyed to Seely should be made good, and Horbach agreed to make or cause to be made any conveyance which was necessary to perfect title to the land.

Cross-examination.

1. You are asked in examination in chief, among other things, to state the manner of that public sale. Will you now state whether or not
80 an organization formed the night previous to the sale, for the purpose of attending that sale and protecting Horbach in bidding off that land at government price? and state whether or not you were one of that organization, and give the names of the others if you can.

(Objected to by complainant as immaterial and irrelevant, and not proper cross-examination.)

Ans. I know not, and did not know of any such organization, and did not belong to any such organization, and do not think such organization was formed the night before. I do not know any persons belonging to such organization.

2. Was there not a meeting held at the office of Redick & Briggs the night previous to the public sale, for the purpose of making some arrangements by which Horbach should be protected at the public sale in buying in a portion of this land, and were you not one of a committee on the part of Horbach in fixing up that arrangement; and if I am not quite correct in detailing the object of that meeting, will you be kind enough to state all about it, and what were its objects?

(Objected to by complainant as immaterial and irrelevant, and not proper cross-examination.)

Ans. On the night previous to the sale there was a meeting at the office of Redick & Briggs, of the city council of the city of Omaha—Mr. Redick and myself, and perhaps some others I don't remember—for the purpose of settling a dispute in relation to the claim title to the land to be sold next day, the city council claiming it for the city of Omaha, and Horbach
81 claiming it for himself. At that meeting there was a proposition made and agreed to by the city council of city of Omaha, and Mr. Horbach, or Mr. Redick for him. I know Horbach was there part of the time, and consented to the arrangement by which they agreed to refer the

matter to Messrs. Megeath and myself, and we were to choose a third person and we three to decide the dispute between the city of Omaha and Mr. Horbach; and that is what I understand that meeting was gotten up for, and not for the purpose of protecting any body in bidding off the land.

3. Was that dispute settled by that committee and was the land bid in at the sale in accordance with that settlement?

Ans. Mr. Megeath, Mr. Ruth, and myself decided what we thought would be right in the premises, but the land was not bid off in accordance with that decision.

4. Did you attend that sale the next day? and state about the manner of the sale, whether there was much noise and confusion, whether there was any threatening to shoot any person on that occasion, and then were what did they grow out of? State, if you know.

(Objected to by complainant as immaterial and irrelevant, and not proper cross-examination.)

Ans. I was present at the sale. The manner of the sale was the same as usual at sales of the public land at land office. There was no unusual noise or confusion until after the sale. After the sale there was some ex-
82 citement and some noise; there were no threats of shooting that I heard pending the sale.

5. What arrangement, if any, was made between you and Horbach, as to what he should pay or what proportion of the land he should give in case you and others assisted him to get his title at the land sale?

(Objected to by complainant as immaterial and irrelevant, and not proper cross-examination.)

Ans. Mr. Horbach came to me and wished to employ me to assist him in procuring title to this land; said that he had employed Mr. Seely. I told Mr. Horbach that I had quit the practice of law, and that I did not wish to take the responsibility of attending to it for him, but that as he had employed Seely, that any arrangement he might make with Seely would be satisfactory to me, and that I would assist Mr. Seely what I could.

6. Did Mr. Seely act for him during all the time until the deed was made by McCormick to him?

Ans. Mr. Seely was his attorney all the time until the making of the deed.

7. What title do you refer to in your answer to the 8th interrogatory, in your examination in chief?

Ans. I referred to the title both by pre-emption and at the sale. The services were rendered at and previous to the sale.

8. Who else were present at Seely's office at the time of the conversation had there, and referred to by you in the examination in chief?

83 Ans. Mr. Seely was present, and I think Jesse Lowe was present a part or all of the time; also McCormick and Horbach. I don't know that McCormick was there all the time, but he was most of the conversation.

9. What relation in law do you bear to Jonas Seely, and how long?

Ans. We were brothers-in-law, and are still.

10. Do you know the span of horses that Seely got of John R. Porter, for five acres of land in section 15, T. 15, R. 13, and adjoining the tract in dispute in this suit. And if so, what did he do with that span of horses before leaving for the west?

(Objected to by complainant, as not proper cross-examination, and leading and irrelevant.)

Ans. I did know a span of bay horses that he did purchase of Mr. Porter, and I suppose took them on the land he sold to Porter. He sold them to me.

11. Did you not take them from Seely as your share of the fee growing out of the Horbach land matter?

Ans. I don't know that it is any of your business what I took them for. I paid him for them so that he was satisfied.

A. J. HANSCOM.

The complainant here introduces in evidence a paper, being deed from Josiah S. McCormick to Jonas Seely, marked Exhibit "A," hereto annexed; also deed from Jonas Seely and wife to complainant, marked Exhibit
84 "B," hereto annexed.

March 11, 1864, examination of witnesses resumed in this case.

J. M. Woolworth appears as sol. for complainant; Redick & Briggs appear as sol's for defendant.

A. J. Hanscom recalled by complainant:

1. State whether or not in the engagement made between you and Seely with defendant Horbach, in reference to the premises in question, you and Seely undertook to secure the land for Horbach of any particular sum. If so, at what sum, and state all that was said between you on that point?

(Objected to by def't Wiggin, on the ground that the same is leading, irrelevant, and immaterial, and indefinite, it not appearing that this defendant was present or knew any of the matter referred to in the question; and objected by the defendant Horbach, on the ground that it is leading, indefinite, and immaterial.)

Ans. I can state that we never made any agreement to procure the land in question at any particular price. There was nothing said with reference to procuring the land at any particular price.

2. State whether or not the defendant Horbach bid on said land at the said public sale thereof.

(Objected to by defendant Horbach, on the ground that it is leading, and by defendant Wiggin as leading and immaterial.)

85 Ans. He did bid on said land.

3. State whether or not he bid upon the whole or a part; and if a part, what part thereof?

Ans. He bid on the tract that was first offered for sale. It was the first eighty. I don't remember which eighty. I don't think he bid on the whole, but won't be positive.

4. State whether or not Seely ever rendered any other legal services than attending this sale for Horbach. If so, what and when?

(Objected to by defendant as leading, and that it don't appear that Seely attended this sale for Horbach.)

Ans. He did. He was Mr. Horbach's attorney in procuring his pre-emption, or assisting to procure the same previous to the sale. He had been his attorney to assist in procuring his pre-emption. I had seen him at his office frequently.

5. State as near as you can when these services commenced, and during what period they continued?

(Objected to by defendant as immaterial.)

Ans. I am unable to give the date when they commenced. It was about the time he attempted to pre-empt, and continued up to the time of the sale.

Cross-examination.

1. You state you and Mr. Seeley undertook to secure this land for Horbach. Will you now state when?

(Objected to by complainant, because the question seeks to mislead the witness, he not having stated he undertook to procure the title.)

86 (Question waived.)

2. How often did McCormick bid on this tract?

Ans. I am unable to say how often he bid it off.

3. How often did Horbach bid on this tract?

Ans. I should think as often as once a minute, until it was bid off.

Augustus Macon, a witness, produced, sworn, and examined on part of complainant, says:

1. Do you know the parties to this suit, or any or either of them? If so, how long have you known them, or such of them as you do know?

Ans. I know the complainant and defendant Horbach, and have known them about six years.

State, if you know, for whom, if for any other person than himself, J. S. McCormick purchased the lands now this city pre-empted by said Horbach, at the time the same were sold at public auction by the United States. If so, for whom, and what are your means of knowledge.

(Objected to by defendant on the ground, 1st, it is immaterial and irrelevant; 2, leading; and 3, it does not appear that the def't Wiggin had any knowledge of that transaction.)

Ans. J. S. McCormick purchased them for J. A. Horbach. My means of knowledge is this: Horbach, I think the day of the sale, or immediately after the sale, in the winter of 1862 or 1861, came into my office and told me——

(Here def'ts object to anything Horbach may have said in regard to this matter, unless it shall first appear that the other defendant, Wiggin,

87 was present.)

Witness proceeds: That J. S. McCormick had bid the land in at public sale for him, and paid for it with his money, he said.

3. State what relations of friendship or otherwise existed between you and John A. Horbach during the years 1860 and 1861. If at any time during those years unfriendly relations existed between you, state the cause of the same, and when the same arose.

(Objected to by defendant as immaterial and irrelevant.)

Ans. From the year 1857 until some time in August, 1861, my relations with Horbach were of a very friendly nature; during most of that time I was his attorney; about some time July or August, 1860, I called on Mr. Horbach to pay me for the legal services I had rendered for him, and he disputed my account, and unfriendly relations grew out of the settlement of my account. That was the first and only matter that arose between us.

4. Who were Horbach's attorneys in procuring his pre-emption claim, and what was the extent of and value of the services so rendered by him.

(Objected to by def't Wiggin as irrelevant and immaterial, and by def't Horbach as irrelevant and immaterial.)

Ans. His attorneys were myself and Jonas Seely. In his case I did comparatively very little. Jonas Seely did most all the work. The services consisted first in trying the case before the land office, which occupied three days in examining witnesses and preparing the case; Seely then took

88 charge of the whole case, as I had other matters to attend to; he (Seely) took the case and did everything that was to do in it; I was only consulted in the case now and then; Seely prepared all the papers and affidavits in the case, which were numerous; Horbach told me that Seely acted as his attorney in compromising the land with the city, and purchasing the land at the public sale, when McCormick bid it in.

(Here defendant Wiggin objects to witness giving any conversation he had with Horbach, as he (Wiggin) was not present.)

Witness proceeds: I suppose the services were worth one thousand dollars.

Cross-examination.

1. Who was present beside yourself at the conversation with Horbach? Where and when was it? Fix the place, day, month, and year.

Ans. John A. Horbach was present, and no one else, in my office. As near as I can fix the time, it was in December, 1860.

2. Where was your office kept at that time?

Ans. It was kept above Tootle's store, in front of the building, up-stairs in the east room.

3. When did Horbach make that statement to you which you have mentioned?

Ans. In December, 1860, in my office, at the time or immediately after the sale.

4. When, if ever, did you bring suit against John A. Horbach, in the district court of Douglas County, N. T.?

Ans. I think on the 31 day of August, 1860.

89 5. Had you not before that time asked him to settle your claim, and had not you and he had some hard words before you brought your suit?

Ans. Yes, sir; we had some about two weeks or a month before I brought suit. I spoke to Mr. Horbach about the settlement of my account, and he refused to settle; I told him I would sue him, and did sue him shortly afterwards. This was the first time I ever mentioned the matter to him.

6. How much did you claim by your suit? and if it has since been paid, how much did you get?

Ans. I don't remember just how much I claimed; but rather than have any further trouble I compromised and took fifty dollars.

7. Do you not remember that your claim was three hundred dollars?

Ans. I do not.

8. State as near as you can what you claimed.

Ans. It was between two hundred and fifty dollars and five hundred dollars.

AUGUSTUS MACON.

MARCH 14, 1864.

Examination of witnesses resumed in this cause. J. M. Woolworth appears as sol. for complainant, Redick & Briggs appear as sol's for defendants.

James Brown, a witness produced, sworn, and examined on part of complainant, says:

1. Are you the complainant in this suit?

90 Ans. Yes, sir.

2. State whether or not you ever made any improvements upon the premises now in question; if so, when and what were the same?

(Objected to by def'ts as leading.)

Ans. Yes, sir; I broke up five acres, then I fenced it on two sides, and there was a division fence of E. V. Smith on the other side, and Mr. Porter's fence was on the other side. It was three years ago this spring. No other improvements, only cultivating the land.

3. State whether or not defendant Horbach had any knowledge of these improvements when you were making the same. If so, what?

(Objected to by def'ts as leading, and by def't Wiggins as immaterial and irrelevant.)

Ans. I can't tell whether he did or not. He never said anything to me in relation to the matter.

4. State whether or not you had any knowledge of Horbach's claiming this land before you perfected your purchase of the same from Seely.

(Objected by defendants as leading, immaterial and irrelevant.)

Ans. I had not.

Cross-examination.

1. State the number of rods of fence you built on this tract in dispute?

Ans. I made forty rods, and agreed with others to pay my proportion of the division fences.

91 2. Where have you resided for the last four years with your family?

Ans. In Omaha.

3. What did you know in regard to Horbach pre-empting the land, a portion of which is in dispute?

Ans. Well, sir, I don't know but little about it; I don't know when it was pre-empted.

4. Have you not known from Horbach and others that Mr. Horbach pre-empted the land and has been fighting for his title the last six or seven years?

Ans. I have had the rumor from different ones of such a thing, of him pre-empting it; I cannot say anything in regard to him more than the rumor.

5. Has it not been rumored about and generally understood that Horbach pre-empted that land and was fighting to maintain his title to the same for the last five or six years?

(Objected by com'pl't as not proper cross-examination, immaterial and irrelevant.)

Ans. I have heard of such things.

6. What do you know of Horbach's living on this tract with his family?

Ans. I know that he lived in a house on what is called the Florence road; I suppose to be on the tract pre-empted, but not on the land in dispute.

7. Who was living there at the time you bought the land of Seely?

Ans. I do not know.

92 8. Is there any house or tenement of any kind on the tract in dispute?

Ans. No, sir.

9. Who did you consult with before you bought this tract of Seely in regard to title?

Ans. I think that I had not consulted with any one, only John R. Porter.

10. What was discussed between you and him at that time in reference to the title?

Ans. I think there was nothing, only he thought it was all right.

11. What did he say with reference to the probability or improbability of the sale being set aside?

Ans. He thought it would not be set aside.

12. What did he say about the probability or improbability of Horbach sustaining his pre-emption?

(Objected to by complainant as not proper cross-examination, and seeks to mislead the witness, he not having stated that anything was said on that subject.)

Ans. Nothing was said upon the subject.

13. Do you not remember that you and Porter had a conversation in regard to what had already been done in the land office in regard to Hamilton and others having filed a caveat to set aside that public sale, and what opinion did Mr. Porter and yourself express upon the result of those proceedings?

(Objected to by complainant as not proper cross-examination, and impertinent, the witness having distinctly and fairly stated that nothing was said

on the subject and nothing whatever appearing that any such conver-
93 sation was had.)

(And here the defendants objects to that kind of objections, for the reason that it seeks to mislead and contradict his own witness, he having just before stated that Porter thought the public sale would be sustained.)

Ans. I don't remember of having any such conversation other than I have stated.)

14. What did you go to consult with Porter for?

Ans. Well, he was an acquaintance.

15. What did you ask him when you went to see him?

(Objected by complainant, it not appearing that he asked him anything.)

Ans. I don't know anything particular; I wanted to know if it was all right with Seely—if he had not given any liens against the land.

16. Did you not know that there was trouble in the land office about this land?

Ans. I wasn't here at the time of the sale; I was in Denver or on the road.

17. Did you not hear when you came back, and before you bought, that there was?

Ans. I heard there was some loud talking on day of sale.

18. Did you not hear that there would be attempts made to break the sale by somebody?

Ans. There was some such talk; I did not know for certain.

20. Well, now, when Porter and you had this conversation was not that matter spoken of between you?

Ans. It might have been, but I don't remember.

JAMES BROWN.

94 THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in and for said county, do hereby certify that the foregoing named witnesses, Jesse Lowe, E. V. Smith, M. T. Patrick, A. J. Hanscom, Augustus Macon, James Brown, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them subscribed were reduced to writing by me, in their presence, and by them subscribed in my presence, and were taken at my office, in Omaha, said county, at the several times therein stated.

Witness my hand this 11 day of May, A. D. 1864.

DAN. GANTT, *Master in Chancery,*

Special warranty deed.

Know all men by these presents, that I, Joseph S. McCormick, of the city of Omaha, Douglas County, Territory of Nebraska, in consideration of the sum of one dollar, in hand paid by Jonas Seely, of Omaha, of Douglas County, Territory of Nebraska, do hereby sell and convey unto the said Jonas Seely the following described premises, to wit: Commencing at the northwest corner of the southwest quarter of the northwest quarter of section number fifteen, (15,) in township No. fifteen (15) north, of range No.
thirteen (13) east of the sixth principal meridian, in the Territory of
95 Nebraska, running thence east forty rods, thence south forty rods, thence west forty rods, thence north forty rods, to the place of beginning, containing ten acres of land. And do hereby covenant with the said Jonas Seely to warrant and defend the said premises only against the lawful claims of all persons claiming by, through, or under me.

Signed this fifteenth day of December, A. D. eighteen hundred and sixty.

JOSIAH S. McCORMICK.

In presence of—

A. J. HANSCOM.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

On this 15th day of December, A. D. 1860, before me, a notary public in and for said county, in person came Josiah S. McCormick, to me known to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and seal at Omaha, Douglas Co., N. T., the date aforesaid.

[SEAL.] LYMAN RICHARDSON, *Notary Public.*

On which was endorsed the following: Josiah S. McCormick to deed Seely, Exhibit "A." Rec'd for record Dec. 15, 1860, at 2 o'clock p. m., and recorded in book "N" of deeds, page 91. (Paid.)

THOMAS O'CONNOR,
Register of Deeds for Douglas County, N. T.

96 *Warranty deed.*

Know all men by these presents that we, Jonas Seely and Cornelia Seely, his wife, of the city of Omaha, Douglas County, Nebraska Territory, in consideration of the sum of two hundred dollars, in hand paid, do hereby sell and convey unto James Brown, of Douglas County, and Territory of Nebraska, the following described premises, to wit: The north half of the following described tract, to wit, commencing at the northwest corner of the southwest quarter of the northwest quarter of section number fifteen, in township No. fifteen north, of range thirteen east of the 6th principal meridian, in Nebraska, running thence east forty (40) rods, thence south forty (40) rods, thence west forth (40) rods, thence north forty (40) rods, to the place of beginning, containing five acres of land, more or less. And we do hereby covenant with the said James Brown that we are lawfully seized of said premises; that they are free from incumbrances; that we have good right and lawful authority to sell the same. And we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever. And the said Cornelia Seely, wife of said Jonas, hereby relinquishes all her right of dower in and to the above-described premises.

Signed this third day of May, A. D. 1861.

JONAS SEELY.
CORNELIA SEELY.

In presence of—
WM. A. LITTLE.

97 TERRITORY OF NEBRASKA, *Douglas County:*

On this third day of May, A. D. 1861, before me, a notary public in and for said county, personally came Jonas Seely and Cornelia Seely, his wife, personally to me known to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed.

WILLIAM A. LITTLE,
Notary Public Douglas County, N. T.

Indorsed in words following: Transfer, dated May 1, 1861, Jas. Van Nostrand, co. cl'k. Warrantee deed, Jonas Seely and wife to James Brown. Dated — day of ———, 18—. Rec'd for record the third day of May, A. D. 1861, at one o'clock p. m., and recorded in record book N, page 337. Exhibit B.

THOS. O'CONNOR,
Register of Deeds in Douglas County, Nebraska.

GENERAL LAND OFFICE, *June* 24, 1859.

Register and Receiver Omaha, N. T.:

GENTLEMEN: Your letter of the 5th of June, 1858, inclosing the testimony in the case of Omaha City *vs.* John A. Horbach, elicited at a rehearing of Horbach's claim in pursuance of instructions from this office, was duly received.

Your joint letter contains a summary of the testimony, from which
98 you conclude that Horbach's entry was illegal, and therefore recommend its cancellation. Having carefully examined the testimony, I concur in your opinion, and have to advise you that the certificate of location per warrant No. 71,060, act of 1855, covering the S. ½, NW. ¼, and S. ½, NE. ¼, sec. 15, T. 15 N., R. 13 E., in the name of said Horbach, has been cancelled. Said location was made in especial fraud of the 13th section of the act of 4th Sept., 1841, which declares a forfeiture of the money paid for the land pre-empted. Please note the cancellation on your books and plats.

Very respectfully,

JAS. S. WILSON, *Acting Commissioner.*

Endorsed:

U. S. LAND OFFICE, *Omaha, Neb., Oct.* 26, 1863.

I hereby certify that the within is a true and correct copy of the original on file in this office.

EDWARD B. TAYLOR, *Register.*

GENERAL LAND OFFICE, *Oct.* 15, 1860.

Register and Receiver, Omaha City, N. T.:

GENTLEMEN, Referring you to my letters of the 24th June and Oct. 11, 1859, relative to the claim of Jno. A. Horbach to the S. ½ of N. E. ¼, and the S. ½ N. W. ¼, sec. 15, T. 15, R. 13 E., lying within the corporate limits of Omaha City, I have now to direct you to offer the aforesaid tracts of land at public sale to the highest bidder. To this end you will give the necessary notice in a newspaper of general circulation printed in Omaha City, once a week for eight successive weeks, prior to the day such sale. For the publication of the notice you will be allowed seventy-five cents per square
99 for the first insertion, and half that sum for each subsequent insertion.

A copy of the notice should accompany the voucher for the payment of the account, and reference should be made therein to this letter, by its date, as the authority under which your action in the matter has been made.

Advise this office of the final disposition of the tracts in question.

Very respectfully your obt. servant,

Endorsed: JAS. WILSON, *Commissioner.*

U. S. LAND OFFICE, *Omaha, Neb., Oct.* 26, 1863.

I hereby certify that the within is a true and correct copy of the original on file in this office.

EDWARD B. TAYLOR, *Register.*

And thereupon, to wit, on the same day and year aforesaid, was filed in the clerk's office of the district court the depositions of Josiah S. McCormick, John A. Horbach, and Byron Reed, which are in words and figures following to wit:

Depositions of witnesses taken in a certain cause pending in the district court of Douglas County, in chancery, wherein James Brown is complainant and John A. Horbach and others are defendants, in pursuance of an order of reference made by said court, and to me directed.

100 MARCH 11, 1864.

Met at my office in Omaha, Nebraska. Redick & Briggs appear as sol's for defendants. James M. Woolworth appears as sol. for complainant.

DAN. GANTT, *Master.*

Josiah S. McCormick, a witness produced, sworn, and examined on part of defendant, says:

Int. 1. What is yonr age and place of residence?

Ans. My age is 28 years, and residence Omaha City.

Int. 2. Do you know the parties to this suit, and do you know Jonas Seely and Andrew Jackson Hanscom?

Ans. I know the parties except Mrs. Porter and Wiggin. I know Jonas Seely and A. J. Hanscom.

Int. 3. What was the real consideration for conveying by you the ten acres of land described in the deed in this case offered in evidence in this cause and marked ; I mean conveying by you to Jonas Seely ten acres of land adjoining Omaha, in section fifteen, township fifteen, range thirteen east?

Ans. It was for services that were to be rendered by Jonas Seely and A. J. Hanscom in procuring at the public sale, at the land office, in Omaha, the west eighty acres of that tract that was sold at one dollar and twenty-five cents per acre, and protecting him in the title of sale if made.

Int. 4. What did you know at the time you made this deed, if anything, and was there anything said at that time by any of the parties who
101 were present about John A. Horbach being indebted to Jonas Seely in any way?

Ans. I know nothing of Horbach being indebted to Seely for anything or any old matter. Nothing was said there in my presence about it. I never heard of Horbach owing Seely anything.

Int. 5. At the land office who was you bidding for if not for yourself on this land?

Ans. I was bidding for myself.

Int. 6. Who did you bid that land in for?

Ans. For myself.

Int. 7. Who were Horbach's attornies to protect him bidding it in at one 25-100 dollars per acre?

Ans. Jonas Seely and A. J Hanscom were acting in that capacity.

Int. 8. What did Hanscom say, if anything, when you came to make the deed, about Jonas taking it all in his own name?

Ans. It was at his request it was done. I don't remember the conversation at all.

Int. 9. What promise did John A. Horbach make at the time in regard to the title in case you should fail?

Ans. I didn't hear him make any; they thought the title was good.

Cross-examination.

Int. 1. Did you make the deed to Seely before or after the sale?
(Objected to by defendants as not proper cross-examination.)
102 Ans. After the public sale.
Int. 2. Did you not make it at Horbach's request?

Ans. I made it at the request of Mr. Hanscom and Mr. Seely. No, sir, I did not at Horbach's request.

Int. 3. Did not Horbach request you to make it?

(Objected to by def't as not proper cross-examination.)

Ans. No, sir.

JOSIAH S. McCORMICK.

Defendants offer in evidence a copy of letters of Com'r of Land Office, dated Sept. 3d, 1861. By consent copy to be used, and hereto attached, marked Exhibit "A."

John A. Horbach, a witness produced, sworn, and examined on part of defendants, says:

Int. 1. What is your age and place of residence?

Ans. My age 31 years, residence Omaha, and have resided there since the spring of 1856.

Int. 2. Did you ever pre-empt a tract of land near Omaha? and if so, what tract and when?

Ans. I did pre-empt the south half of the northeast, and south half of the northwest quarter of section fifteen, township fifteen, and range thirteen east, and adjoining the city of Omaha. I laid claim to it in 1856, and entered the land at the land office in Omaha City and paid for the same November 21st, A. D. 1857.

Int. 3. When did you get your title perfected to said premises by receiving your patent?

103 Ans. In the spring, or rather winter, of 1861.

Int. 4. Was you ever indebted to Jonas Seely for services or otherwise?

Ans. I had a conditional arrangement with him by which I would be indebted to him if I obtained title to the land at one 25-100 dollars per acre.

Int. 5. Do you mean at public sale or what?

Ans. At public sale.

Int. 6. Did you obtain title to the land at one 25-100 per acre at public sale?

Ans. No, sir, nor at no other price.

Int. 7. Then, answer the question. Were or are you indebted to Jonas Seely for services rendered for you at any time?

Ans. No, sir.

Int. 8. What was the real consideration by McCormick received for conveying the tract of ten acres of this land pre-empted by you to Jonas Seely, and why was it not conveyed to Seely and Hanscom?

Ans. I know of no consideration except the promise of Seely and Hanscom to sustain his entry by purchase, and such services as they may have rendered him at the sale in bidding in the land.

Int. 9. Who did McCormick bid in the land for?

Ans. I suppose he bid it in for himself. He did not bid it in for me.

Int. 10. Who was your attorneys to protect you at said sale in buying it in at one 25-100 dollars per acre?

Ans. A. J. Hanscom and Jonas Seely.

Int. 11. State when you first learned that Seely had sold the land

104 in dispute to Brown?

Ans. It was after my return from the east, and some time about the first of June, 1861.

Int. 12. State what you know of Seely negotiating with Brown about the land?

Ans. I never heard of any negotiations about the land with Mr. Brown or any body else.

Int. 13. What was said by Hanscom, if anything, at the time McCormick made the deed to Seely?

(Objected to by compl't, because it does not appear that the witness was present at the time.)

Ans. He told McCormick to put the ten acres in Seely's name, as he did not want to be known in the transaction, as he would have to appear as a witness before the land office in sustaining McCormick's title.

Int. 14. What representations or promises did you make, if any, in regard to perfecting the title of McCormick? In case it failed you succeeded in maintaining your original entry?

Ans. I made no promises or representations of any kind to Mr. Hanscom or Seely, or any one else, by which I was to make the title good.

Int. 15. What was said, if anything, by Hanscom and Seely at that time as to the probability or improbability of sustaining the McCormick entry?

(Objected to by compl't as immaterial.)

Ans. Hanscom said he would risk the title of McCormick; that all hell couldn't break it.

105 Int. 16 What did Brown know, if anything, when he bought of Seely, in regard to your claim to the land, and whether you had any conversation with him on the subject?

Ans. Brown knew that I had a certificate by pre-emption to this tract of land embracing the tract in controversy, and knew that I was determined to maintain my title. He had repeatedly asked me about it in 1857, 1858, and 1859, all along.

Int. 17. What improvements had you on the tract at the time be bought, and of what did they consist?

Ans. A house and stable, about ten or twelve acres breaking and about fifty acres enclosed with fence.

Int. 18. State who, if any person, ever lived on the tract in dispute, and whether, if you know, there was any house, barn, or out-house, or anything of the kind on the tract?

Ans. There was never any house upon or any person lived upon the tract.

Int. 19. Had you any conversation with Augustus Macon before or after this public sale with reference to this tract in dispute, or anything concerning it? And if you should answer you had not, state how you know you hadn't.

Ans. I had not for at least a year before the sale, and never since. It was about six months before I was not on speaking terms with Mr. Macon.

106 Int. 20. Did you ever state to Hanscom or any body else anything in regard to the purchase of the land by McCormick in reference to your interest in the purchase in any way?

(Objected to by compl't as leading.)

Ans. I did not to Mr. Hanscom or any one else, that I recollect, except to Mr. Seely. He came after me after the sale; was over and wanted me to have Dick make him and Hanscom a deed. I told him that they had not carried out their agreement with me, and that I received no title, and that Dick McCormick might do as he pleased.

Cross-examination by complainant.

Int. 1. Did you not have a conversation in the city of Washington, in the winter of 1860–1861, with J. N. H. Patrick, in which you stated that you wished to get his assistance in setting aside the McCormick entry in order that you might receive back the money with which he had paid for the land?

(Objected to by def'ts as not proper cross-examination and leading.)

Ans. I never had any such conversation with J. N. H. Patrick at Washing-

ton or any where else, and never asked him for any assistance in any way that I recollect of.

Int. 2. Did you not then and there apply to him to get for you, or aid you in getting, scrip of some sort with which to enter said land?

(Objected to by def'ts as not proper cross-examination, leading and
107 immaterial.)

Ans. I did not.

Int. 3. Did you not then and there tell him that you wished to enter the land and have neither your pre-emption nor McCormick's purchase sustained, in order that you might be relieved of deeds which you had made to parts of the tract, and hold all the property yourself.

(Objected to by def'ts as not proper cross-examination, leading and immaterial.)

Ans. I did not.

Int. 4. What is the name of your wife's mother?

(Objected to by def't as not proper cross-examination, and immaterial.)

Ans. Rebecca Wallace.

Int. 5. Was she ever in this country, in this Territory?

(Objected to by def't as not proper cross-examination, and immaterial.)

Ans. Not that I know of.

Int. 6. Did she ever hold the title to any part of the land pre-empted by you?

(Objected to by def'ts as not proper cross-examination, not the best evidence, and immaterial.)

Ans. I believe not.

Int. 7. Did not McCormick convey a part or the whole of the land pre-empted by you to her?

(Objected to by def't as not proper cross-examination, not the best evidence, and immaterial.)

Ans. I think he made a deed. I don't think it was ever acknowledged or delivered.

108 Int. 8. Did you not yourself take such deed to the register's office to be recorded?

(Objected to by def't as not proper cross-examination, and immaterial.)

Ans. I have no recollection of having done so.

Int. 9. Did you not have that deed in your possession at one time?

(Objected to by def'ts as not proper cross-examination, and immaterial.)

Int. 10. Did you not receive the money returned by the government paid for the McCormick entry?

(Objected to by def't as not proper cross-examination, leading and immaterial.)

Ans. I did not.

Int. 11. Do you not know that she received it?

(Objected to by def'ts as not proper cross-examination, irrelevant and immaterial.)

Ans. I do not.

Int. 12. What do you mean by Dick, when in answer to the twentieth interrogatory that Seely wanted you have Dick make him and Hanscom a deed?

Ans. J. S. McCormick.

Int. 13. Did you not, before the public sale to McCormick, and on the day of the sale, and at the city of Omaha, tell Jesse Lowe that McCormick was going to bid on the land for you?

(Objected to by def't on the ground that it seeks to mislead the witness, for he may have told Jesse Lowe that John McCormick was going to
109 bid on the land for him.)

Ans. I did not so tell him before, but may have told him on the morning of the sale that John McCormick, under an arrangement with the city of Omaha and myself, was to bid in the east eighty, and I was to bid west eighty; that an arrangement had been made the evening previous.

Int. 14. Did you not, on the day of sale, and before it took place, at the city of Omaha, tell Jesse Lowe that J. S. McCormick or Dick McCormick was going to bid on the land for you?

(Objected to by def'ts, on the ground that it is immaterial what he told him, for it was not true if he did.)

Ans. I did not.

Re-examination by defendants.

Int. 1. Under what circumstances did Hanscom and Seely derive all their knowledge, if any, they have got about this transaction?

Ans. As attorneys for me.

JNO. A. HORBACH.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in and for said county, do hereby certify that the foregoing witnesses, Josiah S. McCormick and John A. Horbach, were by me first duly sworn to testify the truth, the whole truth, and
110 nothing but the truth; that the foregoing depositions by them, respectively, subscribed, were reduced to writing by me, and were written in their presence, and by them subscribed in my presence, and were taken at my office, in Omaha, said county, at the several times therein set forth.

Witness my hand this 11th day of March, A. D. 1864.

DAN. GANTT, *Master in Chancery.*

Depositions of witnesses taken in a certain cause pending in the district court of Douglas County, Nebraska, wherein James Brown is complainant and John A. Horbach and others are defendants, in pursuance of an order of reference made by said court and to me directed.

MARCH 11, 1864.

By consent of parties' solicitors, examination of witnesses had at my office, in Omaha. J. M. Woolworth appears as solicitor for complainant; Redick & Briggs appear as sol's for defendants.

DAN. GANTT, *Master in Chancery.*

Byron Reed, a witness produced, sworn, and examined on the part of defendant, says:

1. What is your occupation and place of residence, and what was your occupation in the month of May, 1861?

111 Ans. Occupation, clerk of Douglas County; residence, Omaha, Nebraska; and my occupation in May, 1861, was real estate agent and investigator of titles, &c.

2. Are you acquainted with the complainant in this suit? and if so, how long have you known him?

Ans. I have been acquainted with James Brown six years or more.

3. Did you ever have any conversation with him in regard to his purchase of the tract of land in dispute from Jonas Seely? If so, when? and was said?

Ans. I had no conversation with Mr. Brown in May or June, 1861. Something was said in regard to his purchase of this land from Jonas Seely. I think it was some time after the purchase had been made, and very little was

said about it; had a very short conversation with him. I don't recollect anything except his remark that he had purchased this land.

BYRON REED.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in and for said county, do certify that Byron Reed, above-named witness, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition by him subscribed was reduced to writing by me in his presence, and by him subscribed in my presence, and was taken at my office, in Omaha, said county, on the day therein stated.

112 Witness my hand this 11th day of March, A. D. 1864.

DAN. GANTT, *Master in Chancery.*

GEN'L LAND OFFICE, *September 3d*, 1861.

GENTLEMEN: I have carefully examined the testimony which accompanied your joint report of the 22d of July last, in reference to the public sale at your office, on the 15th December last, to J. S. McCormick, of the S. ½ of the NW. ¼ and the S. ½ of the NE. ¼ of sec. 15, T. 15 N., R. 13 E., 6th P. M., per certificates 1,456 and 1,457. This testimony states that "the night before the day of sale" an "arrangement was made between certain parties" and John A. Horbach to the effect that Horbach was to bid on the west 80 of said land, and they would see that there was no one bid against him. Mr. John McCormick was selected by them to bid on the east 80 and convey to Horbach all his improvements and 20 lots as they claimed on survey for town purposes without any consideration from him. It also appears from the evidence that attempts were made by intimidations to hinder or prevent persons from bidding or purchasing the first-mentioned tract, the aforesaid arrangement and attempts at intimidation being in direct violation of the 4th section of the act of Congress, approved March 31st, 1830, for

113 the suppression of fraudulent parties at the public sales of the lands of the United States, &c. (Stat., vol. 4, p. 392.) I have cancelled the certificates of sale. You will please note the cancellation in your books. I have enclosed a copy of this letter to Hon. R. M. Young, the attorney of Rebecca Wallace, the assignee of the purchaser, and advised him to request her to apply for the return of the purchase-money under the acts of 12 Jan'y, 1825 and Feb'y 28th, 1859.

These tracts will hereafter be duly offered after proper public notice, but not until you receive specific instructions.

Respectfully, your obed't servant,

J. M. EDWARDS, *Commissioner.*

Register and Receiver, Omaha City, Nebraska.

And thereupon, to wit, on the 10th day of May, 1864, a motion to suppress deposition was filed in words and figures following, to wit:

In district court, Douglas County.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants. } In chancery.

And now come said defendants, by their counsel, and move the court

114 to suppress the deposition of Jonas Seely, on the ground that it appears from said deposition and other testimony in this cause that all the facts stated in said deposition were derived by said Seely as the attorney of said def't Horbach, and in a confidential capacity.

REDICK & BRIGGS, *Solicitors for Def'ts.*

Ans. I did not so tell him before, but may have told him on the morning of the sale that John McCormick, under an arrangement with the city of Omaha and myself, was to bid in the east eighty, and I was to bid west eighty; that an arrangement had been made the evening previous.

Int. 14. Did you not, on the day of sale, and before it took place, at the city of Omaha, tell Jesse Lowe that J. S. McCormick or Dick McCormick was going to bid on the land for you?

(Objected to by def'ts, on the ground that it is immaterial what he told him, for it was not true if he did.)

Ans. I did not.

Re-examination by defendants.

Int. 1. Under what circumstances did Hanscom and Seely derive all their knowledge, if any, they have got about this transaction?

Ans. As attorneys for me.

JNO. A. HORBACH.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in and for said county, do hereby certify that the foregoing witnesses, Josiah S. McCormick and John A. Horbach,
were by me first duly sworn to testify the truth, the whole truth, and
110 nothing but the truth; that the foregoing depositions by them, respectively, subscribed, were reduced to writing by me, and were written in their presence, and by them subscribed in my presence, and were taken at my office, in Omaha, said county, at the several times therein set forth.

Witness my hand this 11th day of March, A. D. 1864.

DAN. GANTT, *Master in Chancery.*

Depositions of witnesses taken in a certain cause pending in the district court of Douglas County, Nebraska, wherein James Brown is complainant and John A. Horbach and others are defendants, in pursuance of an order of reference made by said court and to me directed.

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By consent of parties' solicitors, examination of witnesses had at my office, in Omaha. J. M. Woolworth appears as solicitor for complainant; Redick & Briggs appear as sol's for defendants.

DAN. GANTT, *Master in Chancery.*

Byron Reed, a witness produced, sworn, and examined on the part of defendant, says:

1. What is your occupation and place of residence, and what was your occupation in the month of May, 1861?

111 Ans. Occupation, clerk of Douglas County; residence, Omaha, Nebraska; and my occupation in May, 1861, was real estate agent and investigator of titles, &c.

2. Are you acquainted with the complainant in this suit? and if so, how long have you known him?

Ans. I have been acquainted with James Brown six years or more.

3. Did you ever have any conversation with him in regard to his purchase of the tract of land in dispute from Jonas Seely? If so, when? and was said?

Ans. I had no conversation with Mr. Brown in May or June, 1861. Something was said in regard to his purchase of this land from Jonas Seely. I think it was some time after the purchase had been made, and very little was

said about it; had a very short conversation with him. I don't recollect anything except his remark that he had purchased this land.

BYRON REED.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in and for said county, do certify that Byron Reed, above-named witness, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition by him subscribed was reduced to writing by me in his presence, and by him subscribed in my presence, and was taken at my office, in Omaha, said county, on the day therein stated.

112 Witness my hand this 11th day of March, A. D. 1864.

DAN. GANTT, *Master in Chancery.*

GEN'L LAND OFFICE, *September 3d*, 1861.

GENTLEMEN: I have carefully examined the testimony which accompanied your joint report of the 22d of July last, in reference to the public sale at your office, on the 15th December last, to J. S. McCormick, of the S. ½ of the NW. ¼ and the S. ½ of the NE. ¼ of sec. 15, T. 15 N., R. 13 E., 6th P. M., per certificates 1,456 and 1,457. This testimony states that "the night before the day of sale" an "arrangement was made between certain parties" and John A. Horbach to the effect that Horbach was to bid on the west 80 of said land, and they would see that there was no one bid against him. Mr. John McCormick was selected by them to bid on the east 80 and convey to Horbach all his improvements and 20 lots as they claimed on survey for town purposes without any consideration from him. It also appears from the evidence that attempts were made by intimidations to hinder or prevent persons from bidding or purchasing the first-mentioned tract, the aforesaid arrangement and attempts at intimidation being in direct violation of the

113 4th section of the act of Congress, approved March 31st, 1830, for the suppression of fraudulent parties at the public sales of the lands of the United States, &c. (Stat., vol. 4, p. 392.) I have cancelled the certificates of sale. You will please note the cancellation in your books. I have enclosed a copy of this letter to Hon. R. M. Young, the attorney of Rebecca Wallace, the assignee of the purchaser, and advised him to request her to apply for the return of the purchase-money under the acts of 12 Jan'y, 1825 and Feb'y 28th, 1859.

These tracts will hereafter be duly offered after proper public notice, but not until you receive specific instructions.

Respectfully, your obed't servant,

J. M. EDWARDS, *Commissioner.*

Register and Receiver, Omaha City, Nebraska.

And thereupon, to wit, on the 10th day of May, 1864, a motion to suppress deposition was filed in words and figures following, to wit:

In district court, Douglas County.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants. } In chancery.

And now come said defendants, by their counsel, and move the court

114 to suppress the deposition of Jonas Seely, on the ground that it appears from said deposition and other testimony in this cause that all the facts stated in said deposition were derived by said Seely as the attorney of said def't Horbach, and in a confidential capacity.

REDICK & BRIGGS, *Solicitors for Def'ts.*

And thereupon, to wit, on the 16th day of May, 1864, Hon. Wm. P. Kellogg, the judge presiding, the following proceedings were had, to wit:

At a district court, in chancery, held for the county of Douglas, at the city of Omaha, on the 16th day of May, 1864.

Present: The Honorable William P. Kellogg, judge.

JAMES BROWN
v.
JOHN A. HORBACH AND RICHARD WIGGIN.

This cause came on to be heard as to said Horbach upon the bill of complaint taken as confessed against him and the pleadings and proofs as to said Wiggin, was argued by counsel, and the court being fully advised in the premises it is ordered, adjudged, and decreed that the defendants make, execute, and deliver to the complainant a good and sufficient deed conveying to him the premises in question in this cause; that is to say, the north half of the following described piece or parcel of land: Commencing at the
115 northwest corner of the southwest quarter of section fifteen, in township fifteen north, of range thirteen east of the sixth principal meridian, running thence east forty rods; thence south forty rods; thence west forty rods; thence north forty rods, to the place of beginning. And in default of so doing within the time above limited, James G. Chapman, one of the masters of this court, make, execute, acknowledge, and deliver said deed to said complainant, and that the said defendants pay the costs of this suit to be taxed.

W. P. KELLOGG, *Judge.*

And thereupon afterwards, to wit, on the 30th day of May, 1864, was filed a notice of appeal, in words and figures following, to wit:

In district court, Douglas County.

JAMES BROWN, complainant,
vs.
JOHN A. HORBACH AND RICHARD WIGGIN, defendants. } In chancery.

To said complainant: Take notice that said defendants and each of them hereby appeal from the final decree of said court, rendered in this cause at the April term thereof, 1864, to the supreme court of the Territory of Nebraska.

REDICK & BRIGGS, *Solicitors for Defendants.*

116 THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

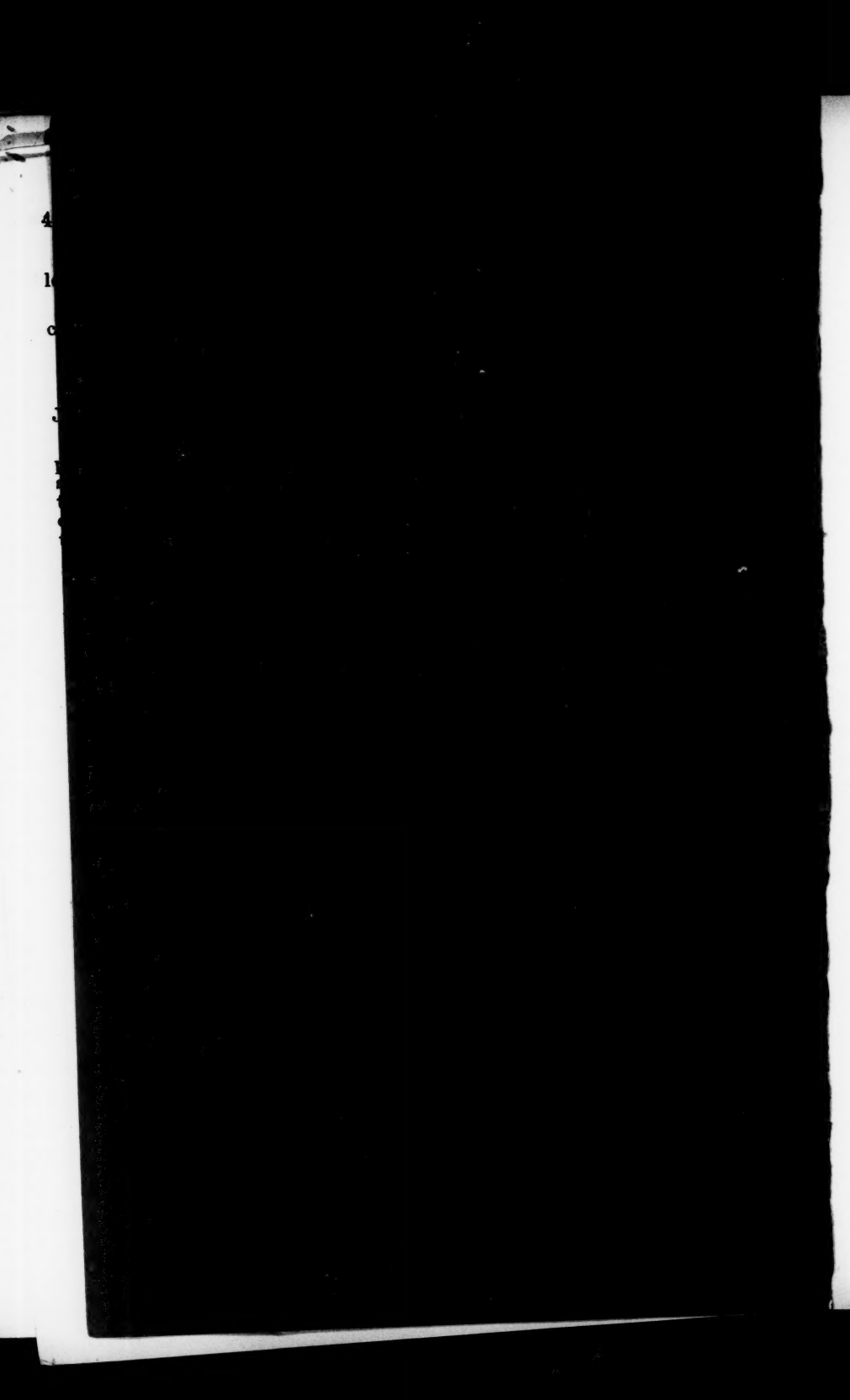
I, J. H. Kellom, clerk of the district court, first judicial district, county and Territory aforesaid, do certify that the foregoing transcript is a true and faithful copy of all the proceedings had in the above-entitled cause on file and entered of record in this office.

Witness my hand and official seal this 29th day of June, A. D. 1864.

[L. S.] J. H. KELLOM, *Clerk.*

Cost of this transcript	$27 15
Cost in supreme court	3 00
	30 15

Filed November 25, 1864.



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UNITED STATES SUPREME COURT.

JOHN A. HORBACH and RICHARD WIGGIN, Appellants,

v.

JAMES BROWN.

Argument for the Appellee.

This case is precisely like that of the same appellants against John R. Porter and wife, except in the following particulars, viz.:

1. The original deed made by McCormick to Seely is here produced, instead of the certified copy of the record.

2. It does not appear, in this case, that Horbach knew of Brown's negociations with Seely for the purchase of the land.

3. Mr. Brown, at folio , describes his improvements.

4. This record does not contain the deposition of McCormick, when recalled by the appellants.

The case is submitted with the other, by the appellee, on the argument of Mr. Porter and his wife.

JAMES M. WOOLWORTH,
Of Counsel for Appellee.